

LOUISIANA WILDLIFE AND FISHERIES COMMISSION

MEETING MINUTES

August 1, 2019

**Alfred R. Sunseri
Chairman**

New Orleans, Louisiana

A handwritten signature in blue ink, appearing to read 'AR Sunseri', is written over the text 'New Orleans, Louisiana'.

The following constitute minutes of the Commission Meeting
and are not verbatim transcripts of the proceedings.

Audio files of the meetings are kept at the
Louisiana Department of Wildlife and Fisheries
2000 Quail Drive
Baton Rouge, Louisiana 70808

For more information, call (225) 763-5775

AGENDA
Louisiana Wildlife and Fisheries Commission
August 1, 2019 – 9:30 AM
Lakefront Airport, New Orleans, Louisiana

1. Call to Order
2. Pledge of Allegiance
3. Roll Call
4. Adoption of July 1, 2019 Commission Meeting Minutes
5. Approval of August 1, 2019 Agenda
6. Commission Special Announcements / Personal Privilege
7. Enforcement Report, July 2019
8. Receive an Updated Report on the Impacts of Floodwaters on the Fishery Resources and Fisheries of Louisiana
9. Receive and Consider a Declaration of Emergency to Set the Fall Inshore Shrimp Season
10. Receive and Consider a Declaration of Emergency Setting the 2019-2020 Oyster Season on the Public Oyster Areas of Louisiana
11. Receive and Consider a Notice of Intent to Modify Oyster Leasing Policies and Procedures and Establish Procedures to Lift the Oyster Lease Moratorium
12. Receive and Consider Notice of Intent to Amend the Alligator Regulations to Reduce the Tag Fees for the 2020 and 2021 Seasons (and Adjust Minimum Water Temperatures for Alligator Farms Regulation – Removed from Agenda)
13. Receive and Consider a Declaration of Emergency and a Notice of Intent for Crappie Creel and Size Limits in Eagle Lake, Madison Parish
14. Receive an Update on the 2019 Recreational Red Snapper Season Landings
15. Receive an Update on Trip Ticket Compliance on Vessels at Seafood Docks and at the Dealer, Number of Vessels, Docks and Dealers Checked, Number of Species Checked and Number of Warnings Written
16. Set December 2019 Commission Meeting Date
17. Public Comments

18. Adjournment

MINUTES OF THE MEETING
OF
LOUISIANA WILDLIFE AND FISHERIES COMMISSION

Thursday, August 1, 2019

The regular meeting of the Louisiana Wildlife and Fisheries Commission was **Called to Order** at 9:30 AM on August 1, 2019, in New Orleans, Louisiana at the Lakefront Airport by **Chairman Sunseri**. The **Chairman** welcomed and thanked everyone for coming to his home town of New Orleans.

Commissioner Smitko led the **Pledge of Allegiance**.

Chairman Sunseri asked for the **Roll Call**. The following Commissioners were present:

Al Sunseri
Bill Hogan
Chad Courville
Dusty Guidry
Joe McPherson
Bobby Samanie
Jerri Smitko

Secretary Jack Montoucet was also present.

Next, **Chairman Sunseri** called for **Adoption of July 1, 2019 Commission Meeting Minutes**. **Commissioner Courville** made a motion to adopt the July 1, 2019 Commission Meeting minutes and it was seconded by **Commissioner Hogan**. The motion passed with no opposition.

In regards to the next agenda item, **Approval of August 1, 2019 Agenda**, Secretary Montoucet asked to remove that portion of the alligator regulations that pertained to adjusting minimum water temperature. **Commissioner Guidry** made a motion to remove that from the agenda, seconded by **Commissioner Samanie** and unanimously approved. Then **Commissioner Samanie** made a motion to approve the agenda with the change, seconded by **Commissioner Smitko** and approved by all.

There were no **Commission Special Announcements/Personal Privilege** for this month.

Major Edward Skena began the **Enforcement Report for July 2019** stating there were 18 boating incidents with 14 injuries and 5 fatalities this month. Also in July there were 937 written citations, 428 written warnings and 19 public assists. News releases discussed included citing 9 boaters for operating a vessel while intoxicated in support of Operation Dry Water which occurred from July 5 – July 7, 2019; conviction of 2 Port Sulphur men in St. Bernard Parish for

possessing in excess of 15% of nonliving cultch material on State Seed Grounds while a third person did not appear in court and a bench warrant was issued for him; 3 oyster fishermen were cited for taking oysters from a polluted area in Lafourche Parish. The 40 sacks of oysters were returned to the water.

Ms. Nicole Smith, Marine Fisheries Biologist, came forward for her agenda item, **Receive an Updated Report on the Impacts of Floodwaters on the Fishery Resources and Fisheries of Louisiana**. Ms. Smith began stating this Mississippi River flood event has been the longest duration flood, surpassing the flood of 1927. The 1927 event was at or above flood stage for 150 days while this year's flood was currently at 200+ days. The Bonnet Carré officially closed on July 27, 2019 having been open for 123 days. Ms. Smith noted all of the Mississippi River locations were projected to be below flood stage within the next few weeks. Department staff was continuing to monitor, taking additional samples along with regular samples to keep track of what was going on in the system. Also, the Department was working with NOAA to understand what was needed for the federal fisheries disaster. Oyster mortalities on the St. Bernard reefs ranged from 75%-100%; public reefs on the east side of Vermilion/Atchafalaya Basin have 76-100% mortality while on the west side they have 62-66%; Calcasieu Lake has ranged from 2-89% with higher mortality occurring at the northern stations; landings were 45% below the 5-year average for the months March-May; and the public water bottom statewide landings were 88% below the 5-year average for March-May. Recent shrimp sampling showed the white shrimp catch per effort was 47% below the 5-year average; the statewide brown shrimp landings and value declined 42% and 53% respectively for the first 33 days of the season; Barataria and Terrebonne brown shrimp landings had a loss of more than 3 million and 2 million pounds of shrimp during the first 33 days of the season compared with the 5-year average; statewide landings of white shrimp were up 15% during this time compared to the 5-year average; the Vermilion/Teche Basins showed a 99% decrease. The catch per effort for crab during April's sampling was 60% below the long term average in the Pontchartrain Basin; in May, the sampling in Vermilion and Atchafalaya Basins were 78% below the long term average; most of the Basins saw a decrease in blue crab landings in April of 27-60%. On finfish, the Department expected to see an increase in freshwater species as well as a few invasive species (Rio Grande Cichlid was caught in the western end of Lake Pontchartrain in July and an Asian Carp was reported caught in June). Black drum commercial landings in Vermilion and Atchafalaya Basins were down 62% from March-May and 53% year to date; and commercial black drum landings in the Calcasieu Basin were down 41% from March-May and 32% year to date. Even though recreational fisheries are not part of the disaster, the Department continues to monitor it. The Inland Fisheries staff has reported they have not had much impact but the wild crawfish landings from March-May were up 29% in the Atchafalaya Basin and 23% statewide.

Chairman Sunseri then announced the next agenda item, **Receive and Consider a Declaration of Emergency to Set the Fall Inshore Shrimp Season** would be given by Mr. Peyton Cagle, Marine Fisheries Biologist. Mr. Cagle's presentation included a map of the three shrimp management zones; Zone 1 (Pontchartrain Basin) white shrimp catch per unit effort (CPUE) for work week 30 was below the 9-year average; Zone 1 average white shrimp size for work week 30 was well above the 9-year average; Zone 1 size frequencies (majority ranged from 21-25 to 61-70 count); crossover date for Zone 1 (on Monday, July 29, Pontchartrain was well over the 50% at 100 count); Zone 2 white shrimp CPUE for work week 30 was lower than typically seen

but white shrimp sizes were above the average; Zone 2 size frequencies (majority were in the 36-40 up to 61-70 ranges); Zone 2 crossover showed on July 29, 2019, 65% were at or bigger than the 100 count; Zone 3 (Calcasieu area) white shrimp CPUE was low with the average white shrimp size barely below the long-term average; Zone 3 size frequencies were within the 71-80 range with a lot of recruitment; Zone 3 crossover date was the middle of the current week; and the predicted August 2019 tidal range. With the crossover date of August 5, 2019, the percentages of shrimp bigger than 100 count and 50 count were shown in each basin. Mr. Cagle then stated the Department recommended a statewide opening from the Mississippi/Louisiana state line to the Louisiana/Texas state line on August 5, 2019 at 6:00 a.m. (A copy of Mr. Cagle's presentation is included in the Appendices Section of the Minutes.)

Mr. Barry Rogers, fisherman from Terrebonne Parish, stated he was in agreement with Mr. Cagle's recommendation. He added that a 6:00 a.m. opening was a safety factor and allows recreational fishermen to access the fishery. Mr. Rogers recommended opening August 5 at 6:00 a.m.

Mr. Pete Gerica, a commercial fisherman from New Orleans, stated the Basin in his area has been the catch basin for everything that has come down the Mississippi River for the last 120 plus days. He added that the waters do not have any shrimp in them. Most of the shrimp seen in the north side of Lake Borgne have eggs in them and should hatch which will give them another crop. Mr. Gerica asked for more time and asked for a traditional 3rd Monday in August opening. If the season opened on August 5th, he felt everything in Lake Borgne would be caught within 2 weeks and that would be the end of the year.

Mr. John Brown, a commercial fisherman from Barataria, agreed with Mr. Cagle's recommendation. He added he rode with the Department and felt the shrimp were large enough to be caught. Mr. Brown mentioned they have no control over Mother Nature and asked that the fishermen be allowed to catch what few shrimp were available. He suggested opening on August 5 at 6:00 p.m. as they shrimp at night.

Mr. Joey Alexie, Marrero, did not wish to speak but wanted the shrimp season to open on August 5.

Mr. Ernest Ruttley, Jr., did not wish to speak but was in favor of the Department's recommendation to open on August 5.

Mr. Gerry Helmer did not wish to speak but wanted an August 5 opening at 6:00 p.m.

Mr. Kenneth Helmer did not wish to speak but was in favor of the proposed opening on August 5.

Mr. Cecil Wattigney did not wish to speak but was in favor of the proposed opening on August 5.

Ms. Claudia Helmer did not wish to speak but wanted the season to open on August 5.

Hearing no further comments, **Commissioner Samanie** made a motion to have a statewide opening on August 5 at 6:00 p.m. except open Vermilion Bay at 6:00 a.m. **Commissioner Smitko** asked what was the reason for having the 6:00 a.m. opening and **Commissioner Samanie** explained it was against the law to trawl at night in Vermilion. **Commissioner Smitko** seconded the motion and it passed with no opposition.

Secretary Montoucet took the time to thank the staff for expanding the ride along program with the shrimpers. He felt the shrimpers were appreciative of this program and it has given the staff the opportunity of having a hands-on experience while using the shrimpers equipment. Secretary Montoucet thanked Assistant Secretary Patrick Banks, Mr. Cagle and the other staff for doing an outstanding job and he then encouraged staff to continue the program. **Chairman Sunseri** agreed with the Secretary and added that the fishermen who are out there have the best knowledge of what was going on and he also encouraged the Department to continue with this program. **Commissioner Smitko** stated she heard comments that this program was going to stop and she felt that would be terrible but felt these were just rumors. She added that putting scientists with the stakeholders was critically important and results in an invaluable partnership. **Commissioner Smitko** noted that allowing everyone to be part of the process makes it so much better and she assured the fishermen the Department would continue the program.

(The full text of the Declaration of Emergency is made a part of the record.)

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Fall Inshore Shrimp Season Opening Dates
August 1, 2019

The Wildlife and Fisheries Commission received information regarding biological sampling for white shrimp in state inshore waters. The Department of Wildlife and Fisheries (LDWF) provided the Commission with data that projected the date when white shrimp will reach marketable size. After considering biological information and public input, the Commission took action to set the fall shrimp season within state inshore waters. Notice of any opening, delaying or closing of a season by the Wildlife and Fisheries Commission will be made by public notice at least 72 hours prior to such action.

In accordance with the emergency provisions of R.S. 49:953 of the Administrative Procedure Act which allows the Wildlife and Fisheries Commission to use emergency procedures to set shrimp seasons and R.S. 56:497 which provides that the Wildlife and Fisheries Commission shall fix no less than two open seasons each year for all or part of inside waters and shall have the authority to open or close outside waters and to increase the minimum mesh size provided in R.S. 56:499 for any trawl, skimmer net, or butterfly net for the duration of any special shrimp season or regular shrimp season extension, the Wildlife and Fisheries

Commission does hereby set the 2019 Fall Shrimp Season in Louisiana state waters to open as follows:

That portion of state inside waters from the Mississippi/Louisiana state line westward to the Atchafalaya River Ship Channel at Eugene Island as delineated by the red Channel Buoy Line to open at 6:00 p.m., August 5, 2019; and,

That portion of state inside waters from the Atchafalaya River Ship Channel at Eugene Island as delineated by the red Channel Buoy Line westward to the western shore of Freshwater Bayou to open at 6:00 a.m., August 5, 2019; and,

That portion of state inside waters from the western shore of Freshwater Bayou westward to the Louisiana/Texas state line to open at 6:00 p.m., August 5, 2019.

The Commission also hereby grants authority to the secretary of LDWF to delay or advance these opening dates if biological and/or technical data indicate the need to do so, and; to close any portion of Louisiana's inside or outside waters to protect small juvenile white shrimp if biological and technical data indicate the need to do so, or enforcement problems develop.

The secretary is further granted the authority to open any area, or re-open any previously closed area, and to open and close special shrimp seasons in any portion of state waters.

Notice of any opening, delaying or closing of a season by the secretary will be made by public notice at least 72 hours prior to such action.

Alfred R. Sunseri
Chairman

The next agenda item, **Receive and Consider a Declaration of Emergency Setting the 2019-2020 Oyster Season on the Public Oyster Areas of Louisiana** was to be presented by Ms. Carolina Bourque, Marine Fisheries Biologist. Ms. Bourque began the presentation showing a map of the public seed grounds and the areas where biologists took samples in July 2019 (105 sampling sites and 525 meter squared samples collected). A graph of the total oyster landings combined (public seed grounds and private leases) was shown and the trip ticket data showed 2018 was below the long-term average (12.4 million pounds) at 11 million pounds of meat. Shown next was a breakdown of where the 2018 landings came from public seed grounds (2%) versus private leases (98%). A table listing the results from the 2019 stock assessment showed a lot of decreases from the 2018 assessment due to the extreme flooding across the state. The Lake Borgne/Mississippi Sound Basin had an overall decrease of 86% of the stock; east of the Mississippi River, south of MRGO had a 100% decrease from last year; Hackberry Bay had an increase in seed production that would eventually grow to market size oysters; Lake Chien/Lake Felicity had an overall loss of 84%; Sister Lake/Bay Junop had an overall decrease of 11% but there was an increase in seed production; no data was shown on the Vermilion Bay/Atchafalaya Basin area; East side of Calcasieu had an increase of 49% overall while the West Cove of Calcasieu had an increase of 55%; and statewide overall results were an increase of 12% in seed production but a decrease of 24% in sacks. The Department's recommendation was to open

Sister Lake for one day (November 18, 2019) for bedding only with no more than 15% of non-living cultch material; then Sister Lake would open on November 19 for market sized oysters (limit of 25 sacks/vessel/day take and possession); and open east and west Calcasieu on November 1 with a limit of 10 sacks/vessel/day take and possession. (A copy of Ms. Bourque's presentation is included in the Appendices Section of the Minutes.)

Following the presentation, **Commissioner Samanie** asked what was the purpose of a 1-day only season on Sister Lake and Ms. Bourque stated the law requires it has to be open for at least 1 day for bedding/transplanting. **Chairman Sunseri** asked if the big numbers in the Lake Borgne/Mississippi Sound area related to the flood or was there any other issues that have impacted those areas. Ms. Bourque stated the reefs in the Lake Borgne/Mississippi Sound had between 75-100% mortality but the cultch was still there. **Chairman Sunseri** then wondered if the reefs were clean and the oysters were in the shell and Ms. Bourque mentioned they have not noticed any sedimentation on top of the reefs yet but was still monitoring every other week to make sure there were no other issues except salinities and low oxygen impacting the reefs. **Commissioner Courville** asked if the 15% non-living material was specific to bedding only or did it apply across the board. Ms. Bourque stated there was a law in place for sacking that takes care of that issue. There being no further discussion, **Commissioner Courville** made a motion to accept the Department's recommendation, seconded by **Commissioner Hogan** and passed with no opposition.

(The full text of the Declaration of Emergency is made a part of the record.)

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

2019-2020 Oyster Season on Public Areas of Louisiana

In accordance with the emergency provisions of the Administrative Procedure Act, Louisiana Revised Statutes (R.S.) 49:953, and under the authority of R.S. 56:433 and R.S. 56:435.1.1, notice is hereby given that the Wildlife and Fisheries Commission declare the 2019/2020 oyster season as follows:

The Sister Lake Oyster Seed Reservation as described in R.S. 56:434, shall open for bedding purposes at one-half hour before sunrise on Monday, November 18, 2019, and shall close to the harvest of seed oysters for bedding purposes at one-half hour after sunset on Monday, November 18, 2019.

Calcasieu Lake Public Oyster Area as described in R.S. 56:435.1.1 shall open to the harvest of market oysters one-half hour before sunrise on Friday, November 1, 2019.

The Sister Lake Public Oyster Seed Reservation shall open to the harvest of market oysters at one-half hour before sunrise on Tuesday, November 19, 2019.

These actions shall not supersede public health closures.

During the 2019/2020 open oyster season, the following provisions shall be in effect:

1. Any vessel from which any person(s) takes or attempts to take oysters from the public oyster seed grounds and reservations described above shall be limited to a daily take and possession not to exceed 25 sacks of oysters per vessel, except for Calcasieu Lake where the daily and possession limits shall not exceed 10 sacks of oysters per vessel. A sack of oysters for the purposes of this Declaration of Emergency shall be defined as the size described in R.S. 56:440. If sacks smaller than the size described in R.S. 56:440 are used, the daily harvest and possession limit shall be based on the number of sacks used, not the size of the sack or other measures. The daily take and possession limit shall not apply to vessels harvesting seed oysters for bedding purposes. The possession limit shall not apply to vessels operating under a valid Oyster Cargo Vessel Permit, and these vessels shall not harvest oysters.

2. All vessels harvesting on the open public oyster seed grounds on Monday, November 18, 2019 shall be harvesting seed oysters for bedding purposes only and shall not have sacks or other containers typically used to hold oysters on board the harvest vessel.

3. A vessel is limited to either harvesting market oysters for direct sale (sacking) or harvesting seed oysters for bedding purposes on any one day and is specifically prohibited from doing both.

4. If any person on a vessel takes or attempts to take oysters from the public oyster areas, seed grounds or reservations described above, all oysters contained on that vessel shall be deemed to have been taken from said seed ground or reservation from the time harvest begins until all oysters are off-loaded dockside.

5. The harvest of seed oysters from a public oyster seed ground or reservation shall be for the purpose of moving the live oyster resource. The removal of more than 15% of non-living reef material in bedding loads is prohibited. All vessels shall allow on-board inspection and sampling of seed oyster loads by LDWF biologists and/or agents.

6. All oysters harvested from public areas, seed grounds or reservations for the purpose of market shall be uncontaminated, sealed and not gaping.

7. All oysters harvested from public areas, seed grounds or reservations for the purpose of market sales shall measure a minimum of 3 inches from hinge to bill.

8. Prior to leaving public oyster areas, seed grounds or reservations with oysters harvested from said public oyster areas, seed grounds or reservations, all oysters must be sacked, the number of sacks shall be recorded in a log book, and each sack shall be properly tagged.

9. All vessels located in public oyster areas, seed grounds or reservations during those times between one-half hour after sunset and one-half hour before sunrise shall have all oyster scrapers unshackled.

10. In Calcasieu Lake, oyster scrapers are prohibited on vessels harvesting oysters.

The following areas shall remain closed for the entire 2019/2020 oyster season:

1. The public oyster seed grounds and reservations, as described in Louisiana Administrative Code (LAC) 76:VII.507, LAC 76:VII.509, LAC 76:VII.511 and LAC 76:VII.516, including all areas east of Mississippi River, Louisiana Department of Health (LDH) Shellfish Harvest Areas 1, 2, 3, 4, 5, 6, 7, 8, and the Vermilion/East and West Cote Blanche Bay/Atchafalaya Bay Public Oyster Seed Grounds.

2. Lake Tambour, Lake Chien, Lake Felicity, Deep Lake and Barataria Bay Public Oyster Seed Grounds as described in LAC 76:VII.517.

3. The Little Lake Public Oyster Seed Grounds as described in LAC 76:VII.521.

4. Hackberry Bay, Bay Junop Public Oyster Seed Reservations and Lake Mechant Public Oyster Seed Ground as described in R.S. 56:434.

5. The Sabine Lake Public Oyster Area as described in R.S. 56:435.1.

6. The cultch plant located on the east side of Calcasieu Lake near Long Point (2017)- Cameron Parish within the following coordinates:

- a. 29 degrees 55 minutes 03.45 seconds N
93 degrees 19 minutes 20.26 seconds W
- b. 29 degrees 54 minutes 55.75 seconds N
93 degrees 19 minutes 01.32 seconds W
- c. 29 degrees 54 minutes 14.64 seconds N
93 degrees 19 minutes 22.67 seconds W
- d. 29 degrees 54 minutes 21.22 seconds N
93 degrees 19 minutes 40.43 seconds W
- e. 29 degrees 54 minutes 31.41 seconds N
93 degrees 19 minutes 12.81 seconds W
- f. 29 degrees 54 minutes 45.83 seconds N
93 degrees 19 minutes 27.63 seconds W

The Secretary of the Department of Wildlife and Fisheries is authorized to take emergency action as necessary to:

1. Close areas if oyster mortalities are occurring or to delay the season or close areas where significant spat catch has occurred with good probability of survival, or where it is found that there are excessive amounts of non-living reef material in seed oyster loads, or if oyster resources and/or reefs are being adversely impacted, or if enforcement problems are encountered.

2. Adjust daily take and/or possession limits as biological or enforcement data indicate a need.

3. Adjust sacking-only areas and/or restrict the taking of seed oysters as biological or enforcement data indicate a need.

4. Reopen an area previously closed if the threat to the resource has ended, or may open areas if substantial oyster resources are located.

Prior to any action, the Secretary shall notify the Chairman of the Wildlife and Fisheries Commission of his intention to make any or all of the changes indicated above.

Notice of any opening, delaying or closing of a season will be made by public notice at least 72 hours prior to such action unless such closure is ordered by the Louisiana Department of Health for public health concerns.

Alfred R. Sunseri
Chairman

Chairman Sunseri announced the next agenda item by Mr. Cole Garrett, General Counsel, was to **Receive and Consider a Notice of Intent to Modify Oyster Leasing Policies and Procedures and Establish Procedures to Lift the Oyster Lease Moratorium**. General Counsel Garrett reminded everyone this presentation was made in January 2019 but was new for **Commissioner Guidry**. At the January 2019 meeting, the Commission took no action since the Landowners Association requested additional time to review the proposal. Some changes have occurred since the January 2019 presentation to the Notice of Intent, primarily providing specific notice to those landowners that had dual claims on water bottoms when a lease application comes in and removed the obligation to put a dual claim agreement or the dual claim lease in public records. A major concession made was, when there was a dual claim on a water bottom and an application has come in, the Department had said they could move unilaterally and issue a sole stated lease with or without the landowner's approval but this has been removed and now the Department cannot act unilaterally if there is no dual claim agreement and would not issue a lease. General Counsel Garrett then went through his presentation beginning with stating the goals of the proposed Notice of Intent; showing a map of Louisiana's public oyster areas and private leases; explained the reasons for the moratorium (Caernarvon Freshwater Diversion, a law suit that flowed from the Diversion and a \$1 billion judgement against the state which was later overturned by the Louisiana Supreme Court and resulted in the Department of Natural Resources asking that there be no more oyster leasing); the Commission took action to put the moratorium in place in 2002 and it remained in place until 2007 when the Commission took action to partially lift the moratorium and allow for processing pending applications. In 2008, a committee was formed to lift the moratorium and establish the process on how to lift it. The committee delivered recommendations in 2009, most of which could have been done through Commission action, but there were 2 recommendations that needed legislation, 1 of which the Legislature did not adopt (Reevaluation of State ownership of leased water bottoms 3 years before lease renewal). Bills were introduced into the Legislature from 2011-2015 trying to deal with all of the recommendations but they were defeated at some point along the line. In 2015, the Oyster Task Force created a committee which included the stakeholders and decided how the moratorium would be lifted, to which General Counsel Garrett felt they put together a good plan which ultimately led to a successful bill passing through the Legislature in 2016 (House Bill

902=Act 595). Act 595 primarily protected oil and gas permittees that preexisted an oyster lease application to do reasonable work on their leases; created subservience access to these leases and set aside buffers for pads, pipelines and such; did not require the State to reevaluate water bottoms upon renewal but, for new lease applications, 90 days was given to contest an application; requires CPRA to establish buffer zones along the coast; and set the phases for lifting the moratorium (Phase 0 to Phase 5). A companion bill to Act 595 was passed during the 2016 Legislative Session (House Bill 1130=Act 570) and it addressed how to get these water bottoms back into commerce without having to litigate the entire coast (dual claimed lands). This legislation also addressed unleased state water bottoms cannot have oysters harvested from them but private landowners were issuing leases on these water bottoms claimed by the State and those people harvesting from these leases were being cited and their oysters were being dumped. The Legislators realized this was not a good practice, and this new legislation allowed that from then on those private leases must be recognized as valid. Maps of St. Bernard Parish, Plaquemines Parish and Terrebonne/Lafourche areas were shown noting the areas of dual claimed properties. General Counsel Garrett then went through the proposed action listed in the presentation talking about the procedure for new leases, modified lease renewals, subordination and designation of access channels, how the Department will provide for a desktop examination, establish how to do dual claimed leases, phases for the lifting of the oyster moratorium, and how long-standing policies were incorporated into the proposed action. (A copy of Mr. Garrett's presentation is included in the Appendices Section of the Minutes.)

On heritability, **Commissioner Smitko** did not think you could appoint a representative, it was property of an estate to which General Counsel Garrett stated there was the need for an executor. **Commissioner Smitko** then felt it had to be done pursuant to Louisiana law to which General Counsel Garrett answered that was correct. The **Commissioner** commented she felt the dual claimed issue was unconstitutional. General Counsel Garrett understood but the Legislature did pass the law in 2016 and was presumed to be constitutional until it was shown as not. He then mentioned that there were so many diverse stakeholders that went through numerous conflicts that this proposal was an imperfect solution but was about as good as it can get. **Commissioner Smitko** asked if a landowner would get noticed of any potential action on land that may have washed away and General Counsel Garrett stated the landowner would have to go to the State Land Office and tell them they pay taxes on a specific property and has title to that land the State lays claim to. **Commissioner Smitko** wondered if the landowner would have to take the first step and General Counsel Garrett said yes, and added that once the property was classified as dual claimed and an oyster lease application was submitted for that property, the landowner would be given notice. **Commissioner Smitko** inquired on whether the landowner would have to go to the State Land Office or was there an app or website that can help with this process to which General Counsel Garrett commented he was not sure. After the **Commissioner** asked where was the map, she was told it was on the Department's oyster website, as well as the Department of Natural Resources and State Land's website. **Commissioner Smitko** noted there are landowners down the bayou that will be affected by this proposal and an effort needs to be made to get the information to them that they need to make a claim to their own land. **Commissioner Courville** asked, if he files an application or nominate a site and it happens to touch land, what happens to the application. General Counsel Garrett said that when an application comes in, a polygon was drawn around the area which triggers the 90-day period for the State Land Office to review and determine it was dry land and not navigable so it cannot be

claimed. **Commissioner Courville** felt the burden would fall on the State Land's Office and not the Department and he was told that was correct. General Counsel Garrett added that every determination of state ownership falls on the State Land's Office. Then the **Commissioner** asked, once it has been determined that part of the polygon was land, it then falls on the applicant to edit his application and General Counsel Garrett answered yes, he has 30 days to amend or withdraw his application. **Commissioner McPherson** asked if the State and the private landowner each gets \$3 for dual claim areas and General Counsel Garrett stated that was correct, adding that the private landowners were not obligated to charge \$3. Then the **Commissioner** felt the State Land Office could not make determination of ownership as noted by the General Counsel, they can only determine whether they exercise a claim to it. General Counsel Garrett felt **Commissioner McPherson's** comment was a fair assessment. **Commissioner McPherson** asked what was the wording in the proposal and General Counsel Garrett read from the Notice of Intent "...if protest is timely made, the administrator of the Office of State Lands shall review the state's claim to ownership of the contested water bottom and issue a preliminary determination to the secretary, the protesting party, and the lease applicant...as to whether the state claims ownership of the contested water bottom. The administrator of the Office of State Lands may evaluate additional information after his preliminary determination, but shall issue a final determination of ownership within one hundred eighty (180) days of receiving the notice of protest." To this wording, **Commissioner McPherson** felt that addressed his concern, the State Lands Office only makes a determination whether they do or do not claim an area. General Counsel Garrett felt a reason for the dual claim avenue was a judge determines ownership ultimately. **Chairman Sunseri** asked if the Oyster Task Force took action on this proposed action and General Counsel Garrett commented that the committee worked to create this document, but the Oyster Task Force made some recommendations, and chose to take no action and had no objection. **Commissioner Smitko** asked, in the lottery phase, how much can one person lease and General Counsel Garrett stated it was 2500 acres total per entity but with a 1,000-acre cap on the application. Then the **Commissioner** asked what could she get if she has 30 corporations and she was told they would each be allowed the 1,000-acre nomination. **Chairman Sunseri** asked if the 1,000 acres had to be in one area to which General Counsel Garrett noted, the area has to be a compact polygon. **Commissioner Smitko** asked if a Power of Attorney could appear for an individual and she was told yes, that would be allowed.

Mr. Scott Kirkpatrick, speaking on behalf of the Wisner Foundation, reminded the Commission they were sent a letter on July 24 and wanted to highlight 2 major elements in that letter. The first element was that private landowners would be limited in the dual claim lease to the provisions the state enjoys. Mr. Kirkpatrick stated this was a fundamental flaw in the process to which they felt the rate and flexibility they need was greater and asked those involved to look at that part of the proposal. He further mentioned the law allows for the private landowner to ask for things beyond what the state does and again asked that it continue to be an element of what was looked at in this process. The second issue related to the State Land Office making ownership determinations. Wisner Foundation has 13 dual claim leases and when engaging with the State Land Office, correspondence was not there showing an actual ownership determination was ever made. Mr. Kirkpatrick added that during Phase 0 was the best time to go back and make determination of ownership and asked that this opportunity be provided. **Commissioner McPherson** wondered what Wisner Foundation felt the oyster leases were worth above the \$3 and noted it would be great if the State Land Office had the capacity to make determinations but

they have such a back log in their office they needed to prioritize their work based on what was currently needed. Mr. Kirkpatrick felt, in most cases, the files in the State Land Office contain the determination that the State owns property but correspondence from the past may show the States assume they own an area, but no determination was made. In relation to the value of oyster leases, Mr. Kirkpatrick felt it varied, some may be better than others. The State wanting to set a firm rate does not indicate how good a lease may be but he wanted to make indemnity provisions, insurance provisions or late payments a part of the process. **Commissioner McPherson** asked if a private landowner could push the issue of a claim and take the State to court and get an adjudication to which Mr. Kirkpatrick knew that would be expensive for the State and private landowners. **Chairman Sunseri** commented on how valuable a lease was that at some point, water bottoms had to be barren but this stipulation was removed from law. General Counsel Garrett thanked Mr. Kirkpatrick and Ms. Phillips for being an integral part of the process as they provided valuable input. In reference to the 2 points of concern, General Counsel Garrett explained the State's position. On the ability to add stipulations or conditions to a landowner of dual claimed properties, the State and landowner will be making compromises to an agreement that would result in not having hundreds of different leases as well as keeps preferential treatment and administers state claimed water bottoms in a fair manner. On the determination of lands that have already been leased, the law was clear and the ability to go to court and seek determination of ownership was available. **Commissioner Courville** asked, under a dual claim agreement, the landowner has the same level of indemnity and protection that the State has and General Counsel Garrett answered that a lease was between the State and the Lessee.

Mr. Charles Marshall, Attorney, began stating he was speaking on behalf of Mr. Andy Wilson, who was very involved with these proposed regulations. Mr. Wilson was concerned with the rank cap on private leases, feeling the cap was unconstitutional as there was nothing that authorized the cap in the legislation. Mr. Marshall mentioned he represents Conoco-Phillips which owns thousands of acres of dual claimed waters and they wanted to be sure the joint leasing would be above judicial suspicion. Mr. Wilson felt free market processes would solve that issue. Mr. Marshall's client was not interested in getting involved with rent, but more focused on the protection from joint leasing. He also mentioned that Louisiana Land had over 600 leases at the time the moratorium went into effect, many of which were unlawfully granted; however, there was a gentleman's agreement that that Department would not renew those leases when they came up for renewal but this has become an issue. Mr. Marshall felt it was a good suggestion to include those leases within Phase 0. **Commissioner Smitko** asked if an individual leases from Louisiana Land and operates on a dual claimed lease and gets hurt, he would have no indemnification and hold harmless and Mr. Marshall felt the concept was, a joint leasing agreement with the Department was to consent for the Department to issue the lease and they would not consider it an overt act that may cloud the title. He also commented that they do not sign the lease with the lessee, the Department does but they have a joint leasing agreement with the Department's office. Then **Commissioner Smitko** wondered if a landowner could not lease their land if they desired and Mr. Marshall agreed to which the **Commissioner** noted a landowner should have known about a danger in the water. Mr. Marshall felt that was something that would not have anything to do with an oyster activity, but if an oyster fisherman decided to sue him, he had the protection of immunity statutes. **Commissioner Smitko** asked Mr. Marshall if he would feel more comfortable if there was a solid indemnity hold harmless statement and she

was told yes. Mr. Marshall added that he would try to put that in the joint leasing agreement. Both **Commissioner Smitko** and Mr. Marshall felt that was a very important issue. General Counsel Garrett agreed that a dual claim agreement between the Department and the private landowner should have language that notes the lease itself should be between the State and the applicant and that was where the contract, indemnity and the liability lies. On Mr. Wilson's constitutional comment, General Counsel Garrett advised that the Constitution allows individuals to contract but the proposed action directs the parameters for the Department to make contracts. He added that if a private claimant wants to preserve their dual claim and enter into an agreement, they will have that opportunity. General Counsel Garrett did not feel there was a constitutional issue, but the ability to contract was available but no one was forced into it.

There being no further comments, **Commissioner McPherson** made a motion to accept the Notice of Intent, seconded by **Commissioner Hogan**. The motion carried with opposition from **Commissioner Smitko** while **Commissioner Courville** abstained from voting on this proposal.

(The full text of the Notice of Intent is made a part of the record.)

NOTICE OF INTENT

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Oysters – Leasing Policies and Procedures (LAC 76:VII.501, 502, 503, 505)

The Wildlife and Fisheries Commission does hereby give notice of its intent to amend Rule, LAC 76:VII.501, 503, 505 modifying existing oyster lease policies and procedures and to enact LAC 76:VII.502 establishing joint leasing procedures for “dual claim” water bottom. Authority for adoption of the Rule is included in Part VII, Subpart D of Title 56 of the Louisiana Revised Statutes of 1950, Act 808 of the 2008 Regular Legislative Session, and Acts 570 and 595 of the 2016 Regular Legislative Session.

Title 76

Wildlife and Fisheries

Part VII. Fish and Other Aquatic Life

Chapter 5. Oysters

§501. Oyster Leases

A. Office Policies and Leasing Procedures:

1. Office hours will be from 8 a.m. to 4:30 p.m., Monday through Friday excluding state holidays.

2. If leases overlap, the department will examine the leases involved and eliminate the overlap by maintaining the overlapped area as part of the earliest-issued lease, amending the other lease agreement(s) and lease plat(s) to subtract the overlapped area, and notifying the lessees of the action taken. ~~No one is to go into the lease document or quadrangle files or application registration without permission of and accompaniment by designated office personnel.~~

3. If examination of a lease indicates an acreage miscalculation, the department will amend the lease agreement and lease plat to state the correct acreage and notify the lessee of the action taken.

4. The Oyster Lease Section will keep an indexing system to determine the acreage held by all oyster lessees. The Oyster Lease Section will also receive and accept information related to the location of private oyster leases, provided that they are on state claimed water bottoms and were encumbered by a private oyster lease that was in effect and properly recorded as of February 1, 2016, and to the extent possible, the location of such leases will be made available to the public through inclusion as part of the existing indexing system and/or the Geographic Index System ("GIS"). Pursuant to R.S. 56:432, no single lessee may hold more than 2,500 acres under lease. Whoever is found to have leased more than the allotted amount by a court of competent jurisdiction shall forfeit all leases held on any water bottom of the state.

5. Oyster leases shall not be issued or renewed within the boundaries of a Wildlife Management Area or a designated Public Oyster Seed Ground or reservation. If extenuating circumstances are established and significant public interests would be furthered, the secretary has the discretion to grant exceptions to this prohibition on a case by case basis.

6. All oyster leases are subordinate to the rights or responsibilities of the state, any political subdivision of the state, the United States, or any agency or agent thereof, to take any action in furtherance of integrated coastal protection as defined in R.S. 49:214.2.

7. Subordination and Designation of Access Channels

a. With the exception of those oyster leases issued under authority of Phase I of the Oyster Lease Moratorium Lifting Priority (LAC 76:VII.505.A.2), any oyster lease initially applied for after July 1, 2016, or any renewal or judicial partition of such lease, is subordinate to the rights of any person:

i. To engage in any activity authorized by a coastal use permit, determination, coastal use authorization, or drilling permit (collectively, for purposes of this section, a "Permit") for which the Permit application was received prior to the date the application for the oyster lease was received. This subordination shall apply only within those areas as designated by the Permit. If no area is delineated by the Permit, then the default area

shall be 75 feet from the centerline of a pipeline and 250 feet from the outside of a well, platform, shell pad, or facility.

ii. To operate, maintain, repair, replace, rehabilitate, or remove any pipeline, well, platform, shell pad, or facility on or impacting such an oyster lease where the structure was placed or constructed prior to September 20, 1980, or prior to the date the oyster lease was issued. This subordination applies only to areas 75 feet from the centerline of a pipeline and 250 feet from the outside of a well, platform, shell pad, or facility.

iii. To cross an oyster lease to access any activity, pipeline, well, platform, shell pad, or facility to which Clause A.7.a.i or A.7.a.ii applies, within a single access route properly designated and identified as follows:

(a). For any activity, pipeline, well, platform, shell pad, or facility, including removal of any of those structures, for which a single access channel is identified in the Permit, the department shall recognize that as the sole access channel across any subordinate oyster lease.

(b). If multiple access channels are identified in the Permit that cross any subordinate oyster lease, then the holder of the Permit shall propose one of them as the sole access channel to the Oyster Lease Section in writing, identifying the centerline of the access channel using the North American Datum 1983 state plane coordinates. Upon receiving the proposal, the Oyster Lease Section shall notify each affected oyster lessee in writing. Upon receiving written notification, the oyster lessee shall have 30 calendar days to object in writing to the Oyster Lease Section and show good cause why the department should not consent to the proposed designation. If an objection is not made within this time period, the department shall recognize the access channel as proposed. If an objection is timely made, the department shall so notify all affected oyster lessees and the holder of the Permit in writing. The affected oyster lessees and the holder of the Permit shall have 30 days from issuance of this notice to propose a mutually agreeable access channel and submit it to the department, identifying the centerline using the North American Datum 1983 state plane coordinates, and the department shall recognize that as the sole access channel. Should the parties fail to reach a mutually agreeable resolution within this time period, the secretary shall have sole discretion to designate a sole access channel across the oyster lease from among those identified in the Permit.

(c). For any activity, pipeline, well, platform, shell pad, or facility, including removal of any of those structures, that was placed or constructed before September 20, 1980 or was placed or constructed before the oyster lease was issued, but for which no access channel has been previously authorized, the holder of the Permit shall propose a single access channel in writing to the Oyster Lease Section, identifying its centerline using the North American Datum (NAD) 1983 state plane coordinates. Upon receiving the proposal, the Oyster Lease Section shall notify each affected oyster lessee in writing. Upon receiving written notification, the oyster lessee shall have 30 calendar days to object in writing to the Oyster Lease Section and show good cause why the department should not consent to the proposed designation. If an objection is not made during this time period, the department shall recognize the access channel as proposed. If an objection is timely made, the department shall so notify all

affected oyster lessees and the holder of the Permit in writing. The affected oyster lessees and the holder of the Permit shall have 30 days from issuance of this notice to propose a mutually agreeable access channel and submit it to the department, identifying the centerline using the (NAD) 1983 state plane coordinates, and the department shall recognize that as the sole access channel. Should the parties fail to reach a mutually agreeable resolution within this time period, the secretary shall have sole discretion to designate a sole access channel across the oyster lease.

(d). Any access channel designated across a subordinate oyster lease and accepted by the department shall be the area within fifty (50) feet from the designated centerline of the channel.

(e). In addition, if a spoil area was previously identified in the Permit for an access channel designated pursuant to this Subparagraph, this Subparagraph shall also apply to the same spoil area; however, such spoil area shall be limited to eighty feet in width adjacent to one side of the access channel.

8. All leases, all applications for leases by persons who have since died, and all property rights or interests acquired pursuant to such leases, made in conformity with the provisions of law and rule, are heritable and transferable. No such inheritance of transfer is effective with respect to the department unless and until an authentic act, judgment, or other valid instrument translatative of title to the lease, application, or property right or interest is registered in the Oyster Lease Section. In the event any oyster lease has been inherited, assigned or transferred to a non-resident, that lease shall not be renewed, pursuant to the residency requirements established in R.S. 56:422.

9. The fee schedule for all processes, as well as the purchase of extra maps, leases, plats or documents, is as follows:

<u>Desktop Examination</u>	<u>\$260</u>
<u>New Ground Application</u>	<u>\$40</u>
<u>Renewal Application</u>	<u>\$30</u>
<u>Lease Transfer</u>	<u>\$10 per lease</u>
<u>All Maps</u>	<u>\$10 per copy</u>
<u>Plats</u>	<u>\$5 per copy</u>
<u>Lease Documents</u>	<u>\$5 per copy</u>
<u>Other materials</u>	<u>\$1 per copy</u>
<u>Computations</u>	<u>\$2 per point</u>
<u>State Plane to Latitude/Longitude</u>	
<u>GIS Data</u>	<u>\$5 per lease</u>
	<u>\$50 per USGS 24k</u>
	<u>section</u>
	<u>\$200 for the dataset</u>

B. Oyster Lease Applications

1. All applicants must appear in person at the Oyster Lease Section office to apply for an new oyster lease, ~~or provide power of attorney to agents to act in on their behalf.~~

a. ~~No application for new area will be accepted from any person not of the full age of majority (18 years)~~

a. All applicants must be either a bona fide resident as defined in R.S. 56:8(16)(a), an officer or registered agent of and applying on behalf of a firm composed of bona fide Louisiana residents, or an officer or registered agent of and applying on behalf of a corporation domiciled in Louisiana or organized under Louisiana Law. Evidence of residency requirements for partnerships, corporations, LLCs, or other business entity and evidence of office-holding or agency shall be provided via certified copy of the filing, in good standing, with the Secretary of State.

b. Applicants shall be of the full age of majority (18 years) when applying for or renewing a lease, or provide power of attorney to agents, evidenced by authentic act, to act on their behalf.

c. Louisiana residency and age shall be evidenced by a valid Louisiana driver's license or state-issued identification.

2. An applicant will be required to outline on a department map the area for which he wishes to apply. ~~Pursuant to R.S. 56:427(A), each element of the verbal description written on the application must be met by the survey plat. Additionally, the survey plat must conform completely to the map outline attached to and made a part of the application; provided however that deviations from the map outline (but not the verbal written description) are permitted when such a deviation would not encroach on a neighboring lease or application, or when the signed written consent of the leaseholder or applicant whose lease or application would be affected, has been granted. In no case will an applicant survey outside of his verbal written description, except as provided in Clause 2.a.ii below.~~

a. In the event of department error ~~which~~ that results in an application being taken in an area where there is a prior ~~undisclosed~~ application or lease ~~which~~ that prevents the applicant from taking the full amount of acreage applied for in the area described, the following procedure shall apply. The applicant shall have the option of:

i. taking a lease of all available remaining acres within the originally described area ~~in a lease~~; or

ii. taking a single lease for up to 110% of the number of acres originally applied for, ~~all applied for acres in one lease~~ outside of the originally described area but in the nearest unencumbered water bottom (a "Revision"), provided that the Oyster Lease Section approves the Revision; or

iii. if neither of the above options is acceptable to the applicant, or if the Oyster Lease Section does not approve a Revision within 30 days after the

applicant notifies the department that he has made that selection, the applicant may have his original application cancelled and receive a full refund of the application fee.

b. The applicant shall have 30 days, from the date of notification of the conflict by certified letter of the conflict, to exercise the above options and notify the department in writing of his selection. If the applicant does not notify the department of his selection within this time period, his application shall be cancelled and the department shall retain all fees.

~~e. If the applicant exercises the option as set out in Clause 2.a.ii above he shall be held to the amount of acres in his original application plus 10 percent.~~

~~d. In all such cases, the department shall have final approval of all relocations.~~

~~e c. Before a Revision lease is issued under Clause 2.a.ii above, Before having the relocation area surveyed, it shall be necessary for the applicant shall first to submit a new application for the revised area of relocation. This application shall be identified as a "Revision" "relocation" application and shall indicate the old original application by number for which it is being substituted and shall also be approved in writing by the Administrator of the Fisheries Division of the department. There will be no charge for the Revision relocation application.~~

~~f d. All Revisions relocations shall follow this procedure. No lease survey shall proceed until the properly completed Revision relocation application has been submitted, accepted and approved. No Revision lease survey is authorized without the above procedure being followed. nor shall the department be responsible for the cost of any survey performed prior to final approval of the relocated application.~~

3. Except as provided in Act 595 of the 2016 Regular Legislative Session,
Where distances between oyster leases, or between oyster leases and the shoreline, are 200 feet or less, no applications or leases shall be taken or issued except that the intervening space may be shared equally by the existing leases or applicants if properly applied for and leased in accordance with existing policies and practices.

4. Water bottoms identified or nominated in lease applications shall be configured in the most compact configuration possible. No new application will be taken or lease, or portion thereof, shall be issued whose length exceeds its narrowest width by more than a factor of three except as follows:

a. between existing leases where all available surrounding water bottoms are taken leased, or under application;

b. in bayous (or similar configurations, connections or cuts between bays, lakes and ponds, etc.), where all available water bottoms are taken with but provided that the water bottom may be leased subject to a subservient clause prohibiting an impediment to

reasonable navigation. However, no application will be allowed to include a narrow water body connecting two otherwise non-contiguous larger water bottom areas identified in the lease application, except with the approval of the Administrator of the Fisheries Management Division.

~~5. — Any application for an oyster lease may be contoured to follow the shoreline.~~

5. Oyster lease applications shall be heritable, but not otherwise transferrable.

a. If an applicant dies before the secretary has determined whether to grant the application, the application may be maintained by the administrator of the applicant's estate, provided that proper proof of the death is presented to the department. The applicant's heir as to the application may also maintain the application, provided that the heir is otherwise eligible for an oyster lease and proper proof of death and heirship is provided to the department.

b. The administrator or heir shall appoint a representative to manage the application within 180 days of the applicant's death. If the department is not notified in writing of the appointment of a representative with the legal authority to maintain and manage the application within 180 days of the applicant's death, the application will be null and void regardless of when the department learns of the death, and automatically cancelled and all fees retained by the department.

c. If the lease is granted, it shall be granted in the name of the applicant's heir as to the application, as shown in the proof of heirship provided to the department.

~~6. — Upon death of an applicant the estate will have 180 days to appoint a representative to deal with the applications. If the department has not been notified within 180 days the application will be cancelled and fees will be retained.~~

6. Any application for a lease exceeding 1,000 acres will be denied.

~~7. — No application for lease shall be transferrable.~~

7. No application will be accepted that would cause an applicant to exceed the maximum total of 2,500 acres under lease and application established in R.S. 56:432.

a. An applicant will be given 30 days to reduce the acreage contained in any application that would cause his lease acreage to exceed 2,500 acres. If the applicant does not amend the application to reduce the acreage accordingly within 30 days of notification of the exceedance, the application will automatically be cancelled and all fees retained by the department.

~~8. An application will automatically be cancelled unless an applicant submits a complete survey, meeting department specifications, no later than 1.5 years after the date of submission of the lease application.~~

8. Once an application for a new lease is received by the department, it will be registered with the Oyster Lease Section and the department will post notice of the application for the lease, along with a copy of the application, map and general description on its website for ninety (90) consecutive days. Concurrent with this 90-day notice period, the department will:

a. Request the Office of State Lands to perform a reasonable investigation to determine whether the water bottom applied for is claimed by the state and susceptible to leasing. The department will deny the lease if the Office of State Lands does not determine that the water bottom applied for is claimed by the state and susceptible to leasing. Alternatively, if the Office of State Lands determines that only part of the water bottom applied for is claimed by the state and susceptible to leasing, the applicant may amend the application within thirty (30) days of such denial to limit it to such areas, and the department will continue to process the application as amended. If the applicant does not notify the department of an amendment meeting all requirements within this time period, the application shall be cancelled and the department shall retain all fees.

b. Submit any application for a new lease to the Coastal Protection and Restoration Authority to review and determine if the water bottom applied for is located in an area where a buffer zone may be necessary to protect sensitive and eroding lands, and if so to delineate the extent of that buffer zone. The department will deny the lease if the Coastal Protection and Restoration Authority determines that a buffer zone is needed on the water bottom applied for. Alternatively, the applicant may amend the application within thirty (30) days of notification of such denial to remove the area of the buffer zone, and the department will continue to process the application as amended. If the applicant does not notify the department of an amendment meeting all requirements within this time period, the application shall be cancelled and the department shall retain all fees.

c. Send written notice of application for the lease to any private person who has previously submitted a claim of ownership of any part of the water bottom applied for to the Office of State Lands. The purpose of this measure is to provide additional notice. The posting of notice of application for lease on the department's website shall be the official notice. Any claim that the department failed to provide written notice, or that such notice was untimely shall not serve to negate an application for lease or extend the protest period.

9. Any private person claiming ownership of any part of the water bottom applied for may protest the issuance of a state lease on the grounds that the protesting party owns the water bottom, as provided below.

a. The Protest must be made in writing via certified mail delivered within the 90-day notice period, concurrently to the secretary through the Oyster Lease Section, the administrator of the Office of State Lands, and the Applicant.

b. The Protest shall include proof of ownership, including but not limited to all information and documentation that the protesting party believes is relevant to the question of ownership.

c. Any right to protest issuance of the lease shall expire if not delivered within the 90-day notice period.

d. Pursuant to R.S. 56:427(F)(2), if protest is timely made, the administrator of the Office of State Lands shall review the state's claim to ownership of the contested water bottom and issue a preliminary determination to the secretary, the protesting party, and the lease applicant within ninety (90) days of receiving the notice of protest, as to whether the state claims ownership of the contested water bottom. The administrator of the Office of State Lands may evaluate additional information after his preliminary determination, but shall issue a final determination of ownership within one hundred eighty (180) days of receiving the notice of protest.

e. The final determination by the administrator of the Office of State Lands shall not be reviewable under the Administrative Procedure Act and is appealable only to the Nineteenth Judicial District Court. Any petition for judicial review of the determination made in accordance with this rule must be filed within sixty days after issuance of the determination.

f. Failure of a private claimant to make a protest has no effect on the right to claim ownership of the leased water bottom pursuant to R.S. 56:423(D).

10. If the administrator of the Office of State Lands finally determines that the state claims ownership of the water bottom applied for, and if the Coastal Protection and Restoration Authority determines that the water bottoms applied for is not essential for integrated coastal protection, and all other requirements are met, the secretary may, at his discretion, execute a lease for the water bottoms in the application, with any amendments as provided in these regulations.

11. An application will automatically be cancelled and all fees retained by the department for any of the following reasons:

a. If the applicant does not appear in person to execute a lease agreement within 60 days of issuance of the initial rental notice.

b. If the applicant fails to request a desktop examination from the department or submit a complete survey meeting department specifications within one year of the date of submission of the lease application.

c. If the administrator of the estate of a deceased applicant or heir as to the application fails to submit the appropriate paperwork naming a representative within one hundred eighty (180) days of the named applicant's death, as provided above.

d. As otherwise provided in these regulations.

12. An applicant may withdraw an application and receive a full refund from the department by submitting a written request for withdrawal within the following timeframes:

a. Within one hundred twenty (120) days after the department posts notice of the application on its website;

b. Within thirty (30) days after issuance of the final determination by the administrator of the Office of State Lands regarding the state's claim to ownership of the water bottoms applied for; or

c. Within thirty (30) days after final judgment in any proceeding for judicial review of the final determination by the administrator of the Office of State Lands regarding the state's claim to ownership of the water bottoms applied for.

13. The department will deny any new lease application for any water bottoms located within seventy-five (75) feet of the centerline of a pipeline that is located on purchased right-of-way. However, if the right-of-way is abandoned and returned to commerce, the secretary may then lease such water bottoms.

a. If only part of the water bottom applied for is within seventy-five (75) feet of the centerline of a pipeline that is located on a purchased right-of-way, the applicant may amend the application to remove all other areas within thirty (30) days of notification of such denial, and the department will continue to process the application as amended. If the applicant does not notify the department of an amendment meeting all requirements within this time period, his application shall be cancelled and the department shall retain all fees.

14. The department will deny any new lease application for any water bottoms located within the following areas:

a. Water bottoms designated as a Public Oyster Seed Ground, reservation, or other public oyster harvest area;

b. Water bottoms that are within the boundaries of a Wildlife Management Area; or

c. Water bottoms or bodies designated as navigable channels or waterways by the United States Army Corps of Engineers, or within 50 feet of the permitted boundary of such channel or waterway.

d. If only part of the water bottom applied for is within one of the above-listed areas, the applicant may amend the application to remove such areas within thirty (30) days of notification of such denial, and the department will continue to process the application as amended. If the applicant does not notify the department of an amendment meeting all requirements within this time period, his application shall be cancelled and the department shall retain all fees.

C. Renewals

1. The lessees of record for expiring leases have first right of renewal on expiring leases for successive periods of fifteen years each, provided that the leased area is capable of supporting oyster populations.

2. All applicants must appear in person at the Oyster Lease Section office to apply for an oyster lease renewal.

a. Applicants shall be the full age of majority (18 years) when applying for or renewing a lease, or provide power of attorney to agents, evidenced by authentic act, to act on their behalf.

b. Louisiana residency and age shall be evidenced by a valid Louisiana driver's license or state-issued identification.

c. All applicants must be either a bona fide resident as defined in R.S. 56:8(16)(a), an officer or registered agent of and applying on behalf of a firm composed of bona fide Louisiana residents, or an officer or registered agent of and applying on behalf of a corporation domiciled in Louisiana or organized under Louisiana Law. Evidence of residency requirements for partnerships, corporations, LLCs, or other business entity and evidence of office-holding or agency shall be provided via certified copy of the filing, in good standing, with the Secretary of State.

3. Leases, or portions of leases, will not be renewed if:

a. The water bottom is determined by the department to be incapable of supporting oyster populations.

b. The water bottom is designated as a Public Oyster Seed Ground, reservation, or other public oyster harvest area, unless specifically authorized by the secretary.

c. The water bottom is within the boundaries of a Wildlife Management Area, unless specifically authorized by the secretary.

d. The water bottom is within an area where the Coastal Protection and Restoration Authority determines is essential for integrated coastal protection or that a buffer zone is necessary to protect sensitive and eroding lands.

e. The renewal applicant fails to meet the residency requirements required by law.

4. In the event a lease, or a portion of a lease, is not renewed for one of the foregoing reasons, the lessee of record at the time of cancellation or his designee has until July 1st of the year the lease was non-renewed to remove cultch or improvements made to the

previously leased bottom, or a period of 90 days from receiving notice of non-renewal, whichever is longer. The secretary, at his discretion and upon a showing of good cause, may extend this time period by 90 additional days.

5. Upon renewal, the secretary may make such stipulations in the leases as he deems necessary and proper and may fully settle all disputes as to lease boundaries.

6. Except as provided in Act 595 of the 2016 Regular Legislative Session regarding Phase II of the oyster lease moratorium lifting process, "take-ups", expansions, reconfigurations, or other lease modifications shall not be considered as lease renewals. Any such application for previously unleased water bottoms shall be processed as a new lease application.

C. Application Fees

1. Application fees for new leases will be \$40.

2. Application fees on leases expiring by 15-year limitation will be \$30.

D. Lease Plat Requirements and Standards for Oyster Lease Surveys

1. Lease applicants can request the department to perform a desktop examination to produce a lease plat, or may hire a licensed surveyor to draft a lease plat.

a. If a desktop examination is requested, an additional fee established by the commission may be charged.

b. When drafting a lease plat depicting leaseable water bottom, the plat shall reference National Agricultural Imagery Program (NAIP) Imagery or any other relevant imagery with spatial resolution of at least one meter (1m).

c. Upon execution of the lease, the department shall provide three copies of the plat to the lessee of record.

2. If no desktop examination is requested by the applicant, the applicant shall furnish to the department a plat, certified by a licensed surveyor, of the water bottom applied for, within one year of receipt of the lease application by the department. A licensed surveyor shall be responsible for conducting any such survey, in accordance with these regulations and the appropriate professional standards of practice. Failure to submit such a plat within the prescribed time period shall result in the automatic cancellation of the lease application and forfeiture of all application fees.

3. Each element of the description written on the application must be met by the plat required by R.S. 56:427(A). Additionally, the plat must conform completely to the map outline attached to and made a part of the application; provided, however, that deviations from the map outline (but not the written description) are permitted when such a deviation would not

encroach on a neighboring lease or application. Such deviations are also permitted when the signed written consent of the lessee or applicant whose lease or application would be affected has been granted; in such cases, the affected lease or application will be amended to remove the overlapped area. In no case will an applicant be allowed to lease outside of his written description, except as provided in Clause B.2.a.ii.

a. Plats drafted by a licensed surveyor are to be drawn on the form prescribed by the department and stamped. The plat shall remain in the custody of the department after receipt.

b. An electronic CADD file, ESRI Shapefile, or other comparable file, as allowed by the department, of the boundary shall be provided to the department together with the plat and within the same time frame as the plat.

c. In the event that a licensed surveyor relies on department GIS information, it shall be at his own risk.

d. If a licensed surveyor repeatedly surveys over an existing lease, application or land area, that surveyor will be reported to the Louisiana State Board of Professional Engineers and Land Surveyors.

4. All corners of oyster lease plats shall be referenced to the Louisiana State Plane Coordinate System, south Zone, NAD83, Survey Feet.

5. Plats shall illustrate any land, any existing structures or improvements within or adjacent to the application boundary.

6. The acreage indicated on all plats, even though calculated to the tenth or hundredth of an acre, shall be rounded up to the next highest acre.

a. All land areas shall be excluded from the acreage calculation and the lease.

7. The application number and the name of the applicant shall be shown on all plats, as indicated on the original application.

8. Standard signs and symbols shall be used on the plat.

9. The department shall not be responsible for the cost of any private survey performed. Contracting a private survey is at the sole discretion and expense of the applicant.

10. Noncompliance with any requirement established by law or by these rules, after 30-day notification from the department by certified mail, shall result in cancellation of the application or lease and forfeiture of all fees to the department.

~~D. Private Surveyors Surveying Oyster Leases for Oyster Farmer~~

- ~~1. Surveyor to be charged the basic rate for copies of documents needed.~~
- ~~2. All corners of oyster lease surveys to be referenced to the Louisiana State Plane Coordinate System, South Zone, NAD83, Survey Feet.~~
- ~~3. Surveyors to plot on the survey plat any land, any existing structures or improvements within or adjacent to the application boundary.~~
- ~~4. Survey plats to be drawn in black ink on standard oyster lease plats furnished by the Louisiana Department of Wildlife and Fisheries Oyster Lease Section and original to become the property of same. Surveyors to provide a formatted ascii file of the coordinates for each corner of the survey that complies with the Oyster Lease Section's geographic information system.~~
- ~~5. The acreage of all surveys, even though calculated to tenth or hundredth of acre, to be rounded up to the next highest acre.~~
- ~~6. Application number and ownership to be shown on all survey plats as indicated on the original application.~~
- ~~7. No land area to be included in survey.~~
- ~~8. Use standard signs and symbols.~~
- ~~9. If a private surveyor repeatedly surveys over an existing lease, application or land area, that private surveyor will be reported to the Louisiana State Board of Professional Engineers and Land Surveyors.~~
- ~~10. Noncompliance with any requirement established by law or by these rules, after 30 day notification from the department by certified mail, shall result in cancellation of the application or lease and forfeiture of all fees to the department.~~

~~E. Office Procedures and Fees~~

- ~~1. If any survey of existing leases shows an overlap, the department will abstract the leases involved and eliminate the overlap, giving the area to the longest continuously uninterrupted lease and shall notify the lessees of the action.~~
- ~~2. Annual rental notices will be mailed to lessees at least 30 days in advance of due date which is January 1 of each year.~~
- ~~3. A fee of \$10 per lease will be charged for transfer of an oyster lease.~~
- ~~4. A fee for all extra maps, leases, plats or documents, will be charged as follows.~~

All maps	\$10 per copy
Plats	\$5 per copy
Lease Documents	\$5 per copy
Other materials	\$1 per copy
Computations State Plane to Latitude/Longitude	\$2 per point

E F. Oyster Lease Posting Requirements. In an effort to comply with R.S. 56:430(B), and to keep within the constraints of R.S. 14:63 dealing with criminal trespassing, the following ~~are the posting~~ oyster lease posting requirements apply to any actively harvested lease.

1. The ~~oyster lessee or person seeking to~~ shall post the oyster lease ~~shall~~ place and maintain signs along the boundaries of the property or area to be posted. These signs shall be written in the English language.

2. The signs shall have letters at least three inches in height and shall be of sufficient size and clarity to give notice to the public of the location and boundary of the oyster lease. The signs shall be placed and maintained at intervals of not more than ~~one-fifth of a mile~~ one thousand (1,000) feet and shall be at least 3 to 12 feet above the water level.

3. At the main entrance to the ~~property lease~~ and at no less than all corners along the boundary of said property, the ~~party seeking to post same~~ lessee shall include his name, initials, or lease number.

4. In marsh areas and canals, posted signs shall also be placed at all major points of ingress and egress.

5. In open waters all signs are to be placed facing outward.

F. Policy Regarding the Splitting of Leases

1. No lease shall be split into non-contiguous pieces unless done so by the Coastal Protection Restoration Authority or by judicial decree.

2. If a lease is split by an acquisition by the Coastal Protection Restoration Authority or judicial decree, the department will issue alternative lease numbers for each discrete remainder lease area. An amended lease or leases for such remainder lease areas will be mailed to the lessee at the address on file with the department's Oyster Lease Section.

3. An amended lease issued by the department because a lease was split pursuant to these rules shall not constitute a new lease for purposes of subordination under Act 595 of the 2016 Regular Legislative Session.

4. Splitting of oyster leases will be done with no fee charged to the lessee by the department.

~~G. — Policy to Comply with Laws Concerning Default in Payment of Rent on Oyster Leases (Noncompliance R.S. 56:429)~~

~~1. — On the first working day in February of each year, the Survey Section will compile a list of leases that are in default (R.S. 56:429). After compiling the list each owner will be notified by certified mail that his lease is in default and will be offered at public auction on the last Tuesday in March. He will also be notified that all works, improvements, betterments, and oysters on the leased area are the property of the state and that the Enforcement Division of the Louisiana Department of Wildlife and Fisheries has been so notified.~~

~~2. — On the first working day following the last day of February all leases still in default will be advertised in a newspaper in the parish in which the lease is located. After the placement of the advertisement, advertisement cost will be added to the lease rent plus 10 percent. Up to and including the second Monday in March, the leases may be reinstated by payment of the rent due plus 10 percent and the advertising cost if applicable.~~

~~3. — On the last Tuesday in March the auction will be held at a place to be designated by the Louisiana Department of Wildlife and Fisheries. The auctioneer will be the chief surveyor or his designee. The opening bid for each lease will be the rent due plus 10 percent and advertising cost. All sales must be paid for in cash or by check. The auction will start with the lowest numbered lease and continue numerically until complete.~~

~~4. — Any leases not sold at auction will be removed from the Oyster Lease Section maps. The area will be open and may be taken by application.~~

~~H. — Procedures to Comply with R.S. 56:432~~

~~1. — The Oyster Lease Section will keep an indexing system to determine the acreage held by all oyster lease holders.~~

~~2. — No application will be accepted that will cause an applicant to exceed a total of 2,500 acres under lease and application. Reference R.S. 56:432.~~

~~3. — An oyster lease applicant will be given 30 days to reduce lease acreage prior to cancellation of any application that would cause his lease acreage to exceed 2,500 acres. If the reduction is not made within 30 days the application will be cancelled and all fees retained by the department.~~

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(10), and R.S. 56:422, R.S. 56:423, R.S. 56:425, R.S. 56:427, R.S. 56:428, Act 808 of the 2008 Regular Legislative Session, Acts 570 and 595 of the 2016 Regular Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 10:470 (June 1984), amended LR 12:844 (December 1986), LR 15:197 (March 1989), LR 17:808 (August 1991), LR 37:1622 (June 2011), LR .

§502. Joint Leasing of Water Bottoms

A. At any time, the department may enter into a joint lease agreement or agreements with a private claimant for the leasing of "dual claim" water bottoms to an applicant for the purposes of oyster cultivation. Such an agreement will be referred to as a Dual Claim Agreement. A copy of each Dual Claim Agreement will be maintained at the department's Oyster Lease Section. The department, in consultation with the administrator of the Office of State Lands, and the private claimant, through the Dual Claim Agreement, will designate water bottoms as "dual claim" and authorize the department to enter into dual claim oyster leases (as defined in Subsection B) with applicants on the "dual claim" water bottoms pursuant to Title 56, Part VII, Subpart D of the LRS of 1950. Except as provided in Subsection E, no Dual Claim Agreement shall contain any restrictions on the applicant more burdensome than those in a traditional state-issued oyster lease. A Dual Claim Agreement shall remain in effect as to the "dual claim" water bottoms affected thereby (1) for the entire term and to the extent of any state-issued oyster lease or renewal issued by the department thereon, or (2) until and to the extent that ownership of the "dual claim" water bottoms is determined by a final, unappealable judgment of a court of competent jurisdiction, or (3) until such time that no Dual Claim Lease has been issued, and no claimed water bottom remains subject to the Dual Claim Agreement by virtue of the exercise of withdrawal rights as provided in Subsection C. Neither the existence nor the terms of any Dual Claim Agreement or Dual Claim Lease shall in any way be interpreted to indicate, determine, allocate, or otherwise affect ownership of any water bottoms or mineral rights beneath any water bottoms.

B. The term Dual Claim Lease shall refer to an oyster lease issued by the department on "dual claim" water bottoms that are subject to a Dual Claim Agreement, for which a private claimant holds record title, to which the state also makes an ownership claim as a sovereign navigable water bottom, and to which title has not been adjudicated to either party by a final, unappealable judgment of a court of competent jurisdiction.

C. Both the department and the private claimant shall have the right to withdraw any dual claim water bottoms or portions thereof from a Dual Claim Agreement by and upon written notice to the other ("withdrawal notice"), provided that the department has not received an application for a Dual Claim Lease on the water bottoms affected by the withdrawal notice at the time the withdrawal notice is received.

D. A Dual Claim Lease shall be executed on a department lease form and shall be subject to the same rules and regulations that apply to traditional state-issued oyster leases, except the Dual Claim Lease shall be titled as such, and shall include and be subject to the following clause: *The water bottoms that are the subject of this lease are committed to a Dual Claim Agreement entered into by and between the Louisiana Department of Wildlife and Fisheries ("DWF") and ("Private Claimant"), as authorized by R.S. 56:425.1 (Act 570 of 2016). That Dual Claim Agreement is on file with the DWF Oyster Lease Section. Lessee hereunder acknowledges that it has been provided a copy of the Dual Claim Agreement in connection with Lessee's application or request for the issuance of this oyster lease. This lease is subject to all terms and conditions of that Dual Claim Agreement in effect on the effective date of this lease. Neither the existence nor the terms of any Dual Claim Agreement or this lease shall in any way*

be interpreted to indicate, determine, allocate, or otherwise affect ownership of any water bottoms or mineral rights beneath any water bottoms.

E. Any state-issued oyster lease may be amended with the consent of the lessee, in the lessee's sole discretion, to (1) incorporate the foregoing clause into the existing state-issued oyster lease and (2) convert the state-issued oyster lease to a Dual Claim Lease. Such conversion shall have no effect on the effective date of the lease or any rights, privileges, or obligations of the lease, except as modified by the clause established in Subsection D of this Section.

F. The department shall receive the same annual rental payment for a Dual Claim Lease as established by R.S. 56:428 for any state-issued oyster lease. However, as a condition of the Dual Claim Agreement, a private claimant may negotiate an additional private rental payment.

1. State-issued oyster leases in existence as of July 1, 2016 may be subject to a Dual Claim Agreement, but the department shall not execute a Dual Claim Agreement that requires private rental payment for such water bottoms.

2. Any such private payment shall be stated in or determinable from the Dual Claim Agreement.

3. Under no circumstances may the department execute a Dual Claim Agreement where the private rental rate exceeds the rate received by the department.

4. If a private rental payment is required, such payment shall be paid directly to the private claimant as lessor; the department shall neither receive nor be the repository for any such payment, nor have any right or responsibility in relation thereto.

5. The Dual Claim Agreement may set forth deadlines and penalties for untimely payment or non-payment of the private payment, but no such deadlines or penalties may be more onerous in terms of deadlines, amount, or consequences than those applicable to state-issued oyster leases. If the Dual Claim Agreement does not provide for such private deadlines or penalties, the deadlines, amount, and consequences for non-payment or late payment of the private payment shall be the same as those applicable to state-issued oyster leases. Regardless, private claimants shall have no responsibility to issue any notice of payment due or late. If a Dual Claim Lease terminates due to non-payment of either the state or private payment, the Dual Claim Lease shall immediately be terminated in its entirety and for all purposes, and the Dual Claim Agreement party whose payment was unpaid shall immediately notify the other party and the lessee of the termination.

G. The department may not execute a Dual Claim Agreement unless it provides that both the private claimant and the department are prohibited from entering into any oyster lease for water bottoms subject to the Dual Claim Agreement, except through a Dual Claim Lease; and that upon the effectiveness of any Dual Claim Lease issued pursuant to the Dual Claim Agreement, the Dual Claim Lease shall replace and supersede in its entirety any then-existing

oyster lease previously granted by the private claimant, but only as to acreage within the Dual Claim Lease.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:425.1 and Act 570 of the 2016 Regular Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR

§503. Oyster Lease Rental Rate and Default for Non-Payment

A. The rental rate for oyster leases shall be as determined by law.

~~A. Whereas the cost of boats, equipment, fuel, and material and supplies has been steadily increasing; and~~

~~B. whereas, the cost for personnel and related benefits for the people performing services for the oyster industry has been increasing; and~~

~~C. whereas, the Seafood Division's budget has not increased for the past three years because of a lack of funds in the Conservation Fund; and~~

~~D. whereas, the present rental rate of \$1 per acre per year has been in effect since April 1, 1903; and~~

~~E. whereas, Section 425 of the Louisiana Revised Statutes of 1950, gives the commission the authority to fix the rental rate of not less than \$1 nor more than \$5 per acre or fraction of an acre per year.~~

~~F. Now, therefore, be it resolved that the commission fixes the rental rate for oyster leases at \$2 per acre or fraction of an acre per year.~~

~~G. Be it further resolved that the new oyster rental rate will become effective January 1, 1980.~~

B. Policy to Comply with Laws Concerning Default in Payment of Rent on Oyster Leases (Noncompliance R.S. 56:429)

1. Annual rental payments shall be due January 1st each year. Annual rental notices will be mailed to lessees no later than December 1st of each year.

2. If a lessee has not paid the rent on or before January 1st of each year, or within sixty (60) days thereafter, the lease shall automatically terminate and be cancelled, and the lessee shall automatically forfeit all the works, improvements, betterment, and oysters on the previously leased water bottoms to the department. Such water bottoms shall then be open for lease in accordance with R.S. 56:425.

3. On or before February 1st each year, the department shall issue a written notice of delinquency by certified mail to each lessee who has not yet paid rent. This notice shall also be published on the department's website and in the official journal of the parish in which the rent-delinquent lease is located.

4. If a lease is forfeited due to failure to pay rent, the cancellation of that lease shall be made public by notice through publication in the official journal of the parish where the formerly leased water bottoms are located. This shall be done within ten (10) days of cancellation.

5. Any lessee who pays the rent on or after February 1st shall pay the rent due plus an additional ten (10) percent penalty.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:428 and R.S. 56:429.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 5:468 (December 1979), LR .

§505. Oyster Lease Moratorium

A. A moratorium on the issuance of oyster leases for water bottoms not presently under lease is established. This includes a moratorium on the taking of oyster lease applications for water bottoms not presently under lease. This moratorium shall remain in place and may not be finally lifted until the following preferential rights have been claimed or forfeited in the following order. Upon the conclusion of the final oyster lease moratorium lifting phase, the secretary shall have the authority to fully and finally lift the moratorium. The secretary shall notify the Wildlife and Fisheries Commission of the lifting of the moratorium and post notice thereof on the department's website at least 30 days before the lifting becomes effective. ~~Applications pending at the time of the March 7, 2002 moratorium may be processed. This includes all pending applications that have been held, along with all fees paid, unless the applicant requested cancellation of the application and refund of fees. In the event of the death of an applicant, the applicant's heirs or legatees should so notify the department; and any lease ultimately issued shall only issue to persons placed in possession of the application by Judgment of Possession or to a court-appointed administrator or executor on behalf of a deceased applicant's estate.~~

~~—— B. —— A moratorium is placed on the auction of oyster leases in default in payment of rent per LAC 76:VII.501.G, as authorized by R.S. 56:429.~~

~~—— C. —— Any leases selected by a leaseholder who has previously selected the relocation option pursuant to R.S. 56:432.1 shall be exempt from this moratorium but only to the extent of such previous selection.~~

~~—— D. —— At such time as the moratorium is lifted, applications for oyster leases will be accepted in accordance with all applicable statutes, rules and regulations and the procedures set out below.~~

~~1. One week prior to the date that the moratorium is lifted, the date, time and place where applications are to be taken will be publicly advertised.~~

~~2. On the date for taking applications only one applicant at a time will be allowed in the office and this applicant will be allowed to take only one application. Each applicant will have 15 minutes to designate the area he wishes to apply for. After the applicant pays the application and survey fees, he may return to the end of the line for another application.~~

~~3. Applications will be taken 24 hours a day (on a first come basis) until the department feels the influx of applicants can be handled during regular office hours at the New Orleans office, at which time anyone will be able to take an application.~~

1. Phase 0: Processing Pre-Moratorium Lease Application Backlog

a. Applications pending at the time of the March 7, 2002 moratorium shall be processed. This includes all pending applications that have been held, along with all fees paid, but excludes applications as to which the applicant requested cancellation of the application and received a refund of fees.

b. In the event of the death of an applicant, the applicant's heirs or legatees shall so notify the department; and any lease ultimately issued shall issue only to persons placed in possession of the application by Judgment of Possession or to a court-appointed administrator or executor on behalf of a deceased applicant's estate.

c. Pending applications shall be subject to the application procedures established in R.S. 56:427(F) and LAC 76:VII.501.B.

d. The Office of State Lands shall make a determination of ownership for water bottoms applied for in any pending application prior to the execution of such lease.

e. Pending applications may be issued as a "Dual Claim Lease" under LAC 76:VII.502 if ownership of the water bottom is contested.

f. No water bottoms applied for in a pending lease application shall be leased if such water bottoms were encumbered by a private oyster lease that was in effect and properly recorded as of February 1, 2016 in the public records of the parish where the water bottoms are located, and at the time of the lease application, are encumbered by a private oyster lease, to the extent of the lease in effect on February 1, 2016. An applicant may amend the pending application to limit it to the remainder of the water bottoms that are not encumbered by the private oyster lease, or may withdraw the application and receive a full refund.

g. Any lease executed under this phase shall not be subject to the subordination conditions established in LAC 76:VII.501.A.7, as they were originally applied for prior to July 1, 2016.

h. In addition to the official notification of eligible applications the department shall post on the department's website a list of all applicants with pending oyster lease applications eligible for process under Phase 0.

2. Phase I: Right of First Refusal for Non-Renewed Avenal Leases

a. In coordination with the Coastal Protection and Restoration Authority, the department shall identify the leases that were not renewed since January 1, 1996, due to recommendations from the Department of Natural Resources that such leases would be in the operational or impact area of a planned integrated coastal protection project, and those leases whose lessee voluntarily failed to renew the lease between January 1, 1996 and October 19, 2004, and was a party to the class action suit entitled Albert J. Avenal, Jr. et al. v. State of Louisiana and the Department of Natural Resources.

b. The lessee of record at the time the original lease was not renewed shall have the right of first refusal for a new lease for the previously leased acreage.

c. The department shall publish a list of eligible leases on its website for sixty consecutive days, together with notice of the right of first refusal for new leases for the previously leased acreage and the deadline for applying for the new leases under this phase. The deadline for application for new leases under this phase shall be sixty days from when notice is first posted.

d. Any potentially eligible applicant who fails to apply during this 60-day application period forfeits all rights to the lease under this phase.

e. In addition to the official notification of eligible leases posted on the department's website, the department shall also send notice of the right of first refusal for new leases for the previously leased acreage and the deadline for applying for the new leases under this phase in writing via certified letter, to all lessees of record at the time of non-renewal. The purpose of this measure is to provide additional notice. The posting of the eligible leases on the department's website shall be the official notice. Any claim that the department failed to provide written notice via certified letter, or that such notice was untimely shall not serve to extend the application deadline or be sufficient cause to negate forfeiture of a lessee of record's right of refusal.

f. No water bottoms applied for in a pending lease application shall be leased if such water bottoms were encumbered by a private oyster lease that was in effect and properly recorded as of February 1, 2016 in the public records of the parish where the water bottoms are located, and at the time of the lease application, are encumbered by a private oyster lease, to the extent of the lease in effect on February 1, 2016. An applicant may amend the pending application to limit it to the remainder of the water bottoms that are not encumbered by the private oyster lease, or may withdraw the application and receive a full refund.

g. Any lease executed under this phase shall not be subject to the subordination conditions established in LAC 76:VII.501.A.7 and R.S. 56:423(A)(2).

h. This phase of the moratorium lifting shall not commence until the department has finally acted upon all outstanding lease applications under Phase 0.

3. Phase II: Incorporation of Adjacent Water Bottoms

a. A lessee may expand any lease existing as of January 1, 2016 under this phase by amending the lease to incorporate immediately adjacent water bottom that is not leased.

b. Such expansion shall be limited to five hundred feet beyond the existing lease boundary, and only toward:

i. Existing Louisiana coastline as shown on the last oyster lease survey plat on record;

ii. Existing Louisiana coastline as of January 1, 2016, as shown by the 2015 NAIP imagery, located within 1,000 feet of the existing lease boundary; or

iii. Another lease existing as of January 1, 2016, but only where there is 500 feet or less between the leases.

(a). Expansion between two leases separated by 500 feet or less shall be divided equally between the two applicants.

(b). Allocation for expansion between three or more applicants whose leases are separated by 500 feet or less must be agreed upon in writing signed by each of them under authentic act, submitted to the department within the application period. The area shall be divided according to this agreement. Failure to provide such an agreement within the application period results in a forfeiture of all rights to expansion under this phase for each applicant.

c. The department shall post on its website, for one hundred eighty consecutive days, notice of the availability of lease expansions and the deadline for applying for expansions under this phase.

d. The deadline for application under this phase shall be one hundred eighty days after notice is first posted.

e. If a lessee fails to apply for an expansion within this application period, he forfeits all rights to expansion under this phase.

f. Expansions issued under this phase shall be identified and issued as an extension to the existing lease and treated as a single lease, including the conditions and the term governing the existing lease. However, the expanded portion of the lease will be subject to the subordination conditions in LAC 76:VII.501.A.7 and R.S. 56:423(A)(2).

g. No water bottoms applied for in a pending lease application shall be leased if such water bottoms were encumbered by a private oyster lease that was in effect and properly recorded as of February 1, 2016 in the public records of the parish where the water bottoms are located, and at the time of the lease application, are encumbered by a private oyster lease, to the extent of the lease in effect on February 1, 2016. An applicant may amend the pending application to limit it to the remainder of the water bottoms that are not encumbered by the private oyster lease, or may withdraw the application and receive a full refund.

h. This phase of the moratorium lifting shall not begin before the time period for applying for leases under Phase I has expired.

4. Phase III: Right of First Refusal for Lessees under Private Lease

a. For any water bottom claimed by a private person that was under a private oyster lease issued by a private claimant with record title to the water bottom and recorded in the public records of the parish where it is located by February 1, 2016, the private lessee of that water bottom at the time of implementation of Phase III shall have the right of first refusal for a new state lease, including a Dual Claim Lease, on any water bottom claimed by the state within the area of the existing private oyster lease.

b. The department shall post on its website, for sixty consecutive days, notice of the right of first refusal for new state leases, including Dual Claim Leases, within the area of private oyster leases and the deadline for applying for new leases under this phase.

c. The deadline for application under this phase shall be sixty days after notice is first posted.

d. If a lessee fails to apply for a lease within this application period, he forfeits all rights to a state lease under this phase.

e. This phase is the only time where lessees may "convert" privately issued oyster leases located on state claimed water bottoms, to state-issued leases, including Dual Claim Leases, under these regulations. Upon conclusion of Phase III, private leases on state-claimed water bottoms previously recognized as valid by Act 570 of the 2016 Regular Legislative Session will either have been converted to regular state leases or Dual Claimed Leases, or they will cease to be recognized by the department. Continued harvest on state water bottoms after this phase without a state-issued lease, regardless of whether a privately issued oyster lease exists, will be subject to enforcement action. Any portions of privately issued oyster leases on water bottoms not claimed by the state at the time of Phase III applications will not be subject to or affected by Phase III, and will not be afforded any right of first refusal or other priority or preference.

f. This phase of the moratorium lifting shall not begin before the time period for applying for Phase II has expired.

5. Phase IV: First Lottery Phase:

a. The department shall post on its website, for sixty consecutive days, notice of the oyster lease lottery and the deadline for entering the lottery.

b. The deadline for submitting an entry shall be sixty days after notice first posted.

c. Any person eligible for an oyster lease under R.S. 56:425 may submit a single lottery entry for an appointment to apply for a single lease under this phase.

i. Individuals may apply multiple times if each application is made on behalf of a separate juridical person. An individual applying on behalf of a non-natural person must submit a certified copy of a filing with the Secretary of State showing that he is an officer or agent of the non-natural person.

d. If any person fails to submit a lottery entry within this application period, he forfeits all rights to a new lease under this phase.

e. Upon the conclusion of the application period, the Oyster Lease Section shall enter each valid applicant into a random selection process using computer-generated randomization software to assign appointment priority.

f. Lottery participants will be given notice of their random priority number following the selection process.

g. The lottery entrants shall be assigned an appointment date and time with the Oyster Lease Section based upon their priority. Appointment times will be assigned strictly by priority and shall not be negotiable.

h. The department shall send notification of the appointment date and time in writing to each lottery entrant at the address provided in the lottery application, at least 14 days prior to the date of the scheduled appointment. Additionally, the department shall maintain an electronic calendar of scheduled appointments and priority queue on its website.

i. A lottery entrant who fails to attend his scheduled appointment, for any reason whatsoever, shall be moved to the bottom of the priority list and his appointment shall be rescheduled accordingly. Failure to attend the rescheduled appointment will result in a forfeiture of all rights to a lease under this phase.

j. This phase of the moratorium lifting shall not begin before the time period for applying for leases under Phase III has expired.

6. Phase V: Second Lottery Phase:

a. If after Phase IV, the secretary believes that a second lottery phase is warranted, then he may elect to conduct a second lottery.

b. This second lottery shall be subject to the same guidelines established by the Commission governing the first lottery.

c. This phase of the moratorium lifting shall not begin before all applications for leases or expansions under Phases I, II, III, and IV have been finally received by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(10), R.S. 56:422, R.S. 56:425, R.S. 56:429, and R.S. 56:432.1, Act 808 of the 2008 Regular Legislative Session, Acts 570 and 595 of the 2016 Regular Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 10:948 (November 1984), amended LR 29:374 (March 2003), LR 33:1397 (July 2007), LR .

The Secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the Commission to promulgate and effectuate this Notice of Intent and Final Rule, including but not limited to, the filing of the Fiscal and Economic Impact Statement, the filing of the Notice of Intent and Final Rule and the preparation of reports and correspondence to other agencies of government.

Family Impact Statement

In accordance with Act 1183 of 1999 Regular Session of the Louisiana Legislature, the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission hereby issues its Family Impact Statement in connection with the preceding Notice of Intent. This Notice of Intent will have no impact on the six criteria set out in R.S. 49:972(B).

Poverty Impact Statement

The proposed rulemaking will have no impact on poverty as described in R.S. 49:973.

Provider Impact Statement

This rule has no known impact on providers as described in HCR 170 of 2014.

Public Comments

Written comments should be addressed to Marc Maniscalco, Department of Wildlife and Fisheries, 2045 Lakeshore Drive, New Orleans, LA, 70122 or via email to mmaniscalco@wlf.la.gov until 4:30 p.m., Friday, October 4, 2019.

Alfred R. Sunseri
Chairman

Chairman Sunseri announced the next agenda item, **Receive and Consider Notice of Intent to Amend the Alligator Regulations to Reduce the Tag Fees for the 2020 and 2021 Seasons** and asked Mr. Jeb Linscombe, Program Manager to make the presentation. Mr. Linscombe stated there was a request, based on a formal recommendation from the Louisiana Alligator Farmers and Ranchers Association, to reduce the alligator tag fee by \$1 for the 2020 and 2021 seasons. After that, the tag fee would go back to the normal \$4 tag fee. The \$4 tag fee was collected at the time a wild or farm raised raw alligator hide was inspected and ready to be shipped out of the State of Louisiana. This fee is put into the Alligator Resource Fund which funds the Alligator Program. Budget projections for the next 3 years was shown with the assumption that the number of alligator hides shipped out of state for the next 2 years would be the same as the last 5 years and there was no increase in expenditures. Another stipulation in the projections was that the same number of alligator eggs collected from 3 WMAs would remain the same. Mr. Linscombe stated they could sustain the program with the \$1 tag fee reduction for the next 2 years. (A copy of Mr. Linscombe's presentation is included in the Appendices Section of the Minutes.)

Mr. Stephen Sagera, President of Louisiana Alligator Farmers and Ranchers Association and past Wildlife and Fisheries Commission member, began thanking the Commissioners for their time serving on the Commission. In 2018, the State hired a lobbyist, through the advice of the Alligator Advisory Council, to handle an issue with the State of California which basically states that at the end of 2019, it would be illegal to import into California any part of an alligator or crocodile for commercial resale. Louisiana has had three 5-year exemptions where a lobbyist was successful in getting 15 years of an open market in California, but unfortunately that person has passed away. The Department has since hired another lobbyist but Mr. Sagera mentioned he and other alligator farmers received word there were some serious problems with the author and lobbyist and their exception they have been receiving may fail. The Association reached out to the Department and shared their concerns and notified the Department the industry would look for the best people in California. Mr. Sagera mentioned they were not lobbyists and knew of their limitations, but have been working closely with and getting advice from the Department and also they have been working with international people such as the Crocodile Specialist Group. This issue could cost upwards of \$1 million, win or lose, but the industry felt it needed to be done. If the exception was not given again to Louisiana, Mr. Sagera felt it may snowball and fail in other states. When the industry was trying to figure out how to fund this endeavor, they looked at the Alligator Resource Fund, which was industry money. The Department wanted to see a 1-year surplus maintained in that Fund, so he asked the Department to study whether there would be a negative effect to giving back \$1 from the tag fees for 2 years. Mr. Sagera knew this request was not a perfect solution, but noted \$300,000 of the \$1 million was still not funded. Mr. Sagera read from a fact sheet on reasons for requesting this \$1 reduction in tag fees. Those in support of this measure include tanneries and the Alligator Advisory Council, and the Department was not opposed to this measure. **Commissioner Courville** agreed that the California issue was a pending and serious one, but his concern was the plan. The **Commissioner** could not say he would support the proposed action right now, but possibly could support a reduction later if there was a defined plan. He then appreciated the efforts in fighting this issue and defending a program that was second to none but he felt it was disappointing having to have this fight. Mr. Sagera thanked **Commissioner Courville** for his comments and

added that this endeavor was with everyone in mind and mentioned it may be tougher to get back in the game if this failed.

Secretary Montoucet commented he comes from the alligator industry and felt the question was not the plan, the money was for the industry and they can spend it the way they see fit. He then added that the problem was the \$3 million in the Fund that the Department could not help the industry with, there was the RFP process the State has to go through in order to hire a lobbyist. Secretary Montoucet went to California and had a horrible experience while there. He mentioned the Department should back off and let the industry do their own lobbying so they can survive and reducing the fee would allow them to have the money they need. To answer the question, will this action hurt the agency, Secretary Montoucet answered no; to the question will it help the industry, Secretary Montoucet answered yes; to the question will it make the industry move faster, again Secretary Montoucet answered yes. He then commented that California was 30% of the market for alligators in the world, and if that was lost, there may be a domino effect. Secretary Montoucet recommended the Commissioners vote for the proposal. **Commissioner Courville** stated his reference to a plan was that it's not just their money, it was landowner's money also. The **Commissioner** suggested a calculated plan at some point would be good and he knew it would cost money to implement, but it should be implemented at a faster rate than the Alligator Advisory Council can execute. **Commissioner Courville** volunteered his time and suggested organizing a group of industry participants to assist in these efforts. **Commissioner McPherson** stated he would support the proposal but asked for clarification on the budget, specifically if numbers for Fiscal Year 2019 were current numbers. Undersecretary Bryan McClinton stated \$4.8 million from 2018 was being rolled into Fiscal Year 2019's budget with the projected revenue being based on the 5-year projection of what the revenue has been while expenditures were based on previous year expenditures. **Commissioner McPherson** asked why may \$2 million more be spent in 2019 than in 2018. Mr. Linscombe noted in 2017, there was a Capital Outlay project which amounted to \$1 million on a new alligator lab at Rockefeller Refuge. In Fiscal Year 2019, another \$1.6 million was spent on the Rockefeller Lab and included in the budget was a \$500,000 Capital Outlay project that may not occur. **Commissioner McPherson** understood the explanation on the expenditures, but asked why does the revenue go down in 2019 when the proposal occurs in 2020 and 2021. Mr. Linscombe commented that there have been 2 dramatic changes over the last 5 years which was the reason this action would be feasible. The first change was funds collected from alligator eggs taken from WMAs went into the Conservation Fund and now those funds are going into the Alligator Resource Fund. The other factor was the number of hides produced on farms going out of the state increased which was bringing in more money. Mr. Linscombe noted when both of these changes occurred, the Department did not spend any additional money. **Commissioner Courville** commented to **Commissioner McPherson** that the Department has done an outstanding job in cutting expenses in that program. Mr. Linscombe explained that with the passing of the consultant that money was not being spent and there may be additional programs coming on board that may account for about \$100,000. **Commissioner McPherson** asked what was the \$500,000 Capital Outlay directed towards and Mr. Buddy Baker, Administrator, stated a lot of programs from the New Iberia office moved to the Lafayette office, which means there was a need for storage. He added that there was a desire to consolidate all of the equipment, tags, etc. into one storage facility and that money was set aside for this project. The reason for the delay in implementing this project was due to staff developing a master plan that would

include all programs that are now housed in Lafayette. Mr. Baker felt the industry needed to be instantaneously proactive whereas State Government cannot produce contracts instantaneously. **Chairman Sunseri** asked if the Department would continue collecting the money and what was the guarantee that the money would be collected. Mr. Sagera stated there was no guarantee, noting the industry was small and everyone knows who the players are and who does the exporting. He added that the Farmers have agreed to the plan and since they write the checks to the State, they would keep the dollar and any farmer that does not contribute would be exposed. Secretary Montoucet commented it was not up to the Department or Commission how the industry spends their money. **Chairman Sunseri** agreed with the proposal explaining that in 2002, California banned the sale of raw consumption of oysters from any Gulf state, so he understood this problem very well. The **Chairman** felt it was the Commission's responsibility to protect this industry and advised he was in favor of this action. **Commissioner Smitko** asked what may be the economic impact to the State if the California issue passes. Secretary Montoucet explained that the industry would lose 30% of the market share. Mr. Linscombe added that in Louisiana alone, the industry was \$150 million, which was a very conservative number. He further stated that the 30% market share was scary, but was not nearly as scary as the possible domino effect. Understanding that, **Commissioner Smitko** made a motion to reduce the tag fee by \$1 to \$3 for the 2020 and 2021 seasons and then go back to the \$4 tag fee in 2022 and this motion was seconded by **Commissioner Samanie**. The motion passed with an abstaining vote from **Commissioner Courville**.

(The full text of the Notice of Intent is made a part of the record.)

NOTICE OF INTENT

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Alligators
(LAC 76:V.701)

The Wildlife and Fisheries Commission does hereby give notice of its intent to amend the alligator regulations governing alligator hide tag fees. The action temporarily suspends the alligator hide tag fee by \$1.00, thereby reducing the tag fee from \$4.00 per tag to \$3.00 per tag for license years 2020 and 2021. This temporary reduction will automatically end December 31, 2021.

Title 76

WILDLIFE AND FISHERIES

Part V. Wild Quadrupeds and Wild Birds

Chapter 7. Alligators

§701. Alligator Regulations

A. – A.3.p. ...

4. Licenses, Permits and Fees

a.i. The licenses and fees required for activities authorized by these regulations are as prescribed under provisions of R.S. Title 56, or as prescribed in these regulations, and are:

- (a). \$25 for a resident alligator hunter's license;
including commercial, helper, sport and nuisance classes;
- (b). \$150 for a nonresident alligator hunter's license;
including landowner and sport classes;
- (c). \$25 for a resident fur buyer's license;
- (d). \$100 for a nonresident fur buyer's license;
- (e). \$150 for a resident fur dealer's license (\$500
deposit required);
- (f). \$300 for a nonresident fur dealer's license (\$1,000
deposit required);
- (g). \$10 for a nongame quadruped exhibitor's license;
- (h). \$25 for a nongame quadruped breeder's license;
- (i). \$50 for an alligator parts dealer license;
- (j). \$5 for an alligator parts retailer license;
- (k). \$4 for each alligator hide tag, except for license
years 2020 and 2021 in which the fee for each alligator hide tag shall be \$3;
- (l). \$4 for each whole alligator leaving the state as
alligator shipping label fee;
- (m). \$0.25 severance tax for each alligator hide taken
from within the state;
- (n). \$25 for a designated agent collection permit.

A.4.a.ii. – A.18.c. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:115, R.S. 56:259, R.S. 56:262, R.S. 56:263 and R.S. 56:280.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 16:1070 (December 1990), amended LR 17:892 (September 1991), LR 19:215 (February 1993), LR 20:321 (March 1994), LR 26:1492 (July 2000), LR 28:1996 (September 2002), LR 30:2338 (October 2004), LR 30:2878 (December 2004), LR 31:2267 (September 2005), LR 33:677 (April 2007), LR 35:690 (April 2009), LR 37:2421 (August 2011), LR 39:2291 (August 2013), LR 42:909 (June 2016), LR 43:90 (January 2017), LR

The secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the Commission to promulgate and effectuate this notice of intent and final rule, including but not limited to, the filing of the Fiscal and Economic Impact Statement, the filing of the Notice of Intent and final Rule and the preparation of reports and correspondence to other agencies of government.

Family Impact Statement

In accordance with Act 1183 of 1999 Regular Session of the Louisiana Legislature, the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission hereby issues its Family Impact Statement in connection with the preceding Notice of Intent. This Notice of Intent will have no impact on the six criteria set out at R.S. 49:972(B).

Poverty Impact Statement

The proposed rulemaking will have no impact on poverty as described in R.S.49:973.

Provider Impact Statement

This Rule has no known impact on providers as described in HCR 170 of 2014.

Public Comments

Written comments may be addressed to Amity Bass, Biologist Director, Department of Wildlife and Fisheries, P.O. Box 98000, Baton Rouge, LA 70898 or via email to abass@wlf.la.gov, no later than 4:30 PM on Friday, October 4, 2019.

Alfred R. Sunseri
Chairman

Moving on, **Chairman Sunseri** asked Mr. Ryan Daniel, Biologist Manager, to come forward for the presentation to **Receive and Consider a Declaration of Emergency and a Notice of Intent for Crappie Creel and Size Limits in Eagle Lake, Madison Parish**. Mr. Daniel stated this proposed action was to establish special regulations for crappie on Eagle Lake. Simply, this action would make the temporary regulations that were put into place in 2015 as permanent

regulations. The recommended permanent regulations were to have a 30 crappie limit per day with a minimum length limit of 11 inches. This temporary regulation was to end on October 1, 2019; however, if the proposed Notice of Intent was accepted, a Declaration of Emergency would be required to keep the regulation in place. The Mississippi Department of Wildlife, Fisheries and Parks intends to maintain the current regulation on Eagle Lake and encouraged Louisiana to do as well. All of Mississippi's data has been reviewed and Department staff supports implementing the reciprocal regulations on Eagle Lake. A map of Eagle Lake was shown to which Mr. Daniel mentioned there was no public access through Louisiana, access could be gained through 4 boat ramps in Mississippi. He added that Mississippi conducts all of the fisheries samplings on the lake, whereas Louisiana provides management recommendations and law enforcement. Prior to 2015, Eagle Lake was managed by state fisheries regulations which allowed 50 fish per day with no minimum length limit. Sampling results and recommendations were received from Mississippi on June 3, 2019 and staff has evaluated them. (A copy of Mr. Daniel's presentation is included in the Appendices Section of the Minutes.)

Commissioner Samanie asked if a stock assessment was done when the temporary regulation was implemented and another one recently to see if there was a difference. Mr. Daniel commented that Mississippi did sampling prior to the new 2015 regulation and has done creel surveys every year since except for this year due to flooding of the Mississippi River which closed Eagle Lake. The **Commissioner** then asked if the 2018 stock assessment showed it was healthy and Mr. Daniel answered it showed there were some improvements in the population. Hearing no further questions, **Commissioner Courville** then made a motion to accept the Declaration of Emergency and Notice of Intent, seconded by **Commissioner Hogan**, and unanimously approved.

(The full text of the Declaration of Emergency and Notice of Intent are made a part of the record.)

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Eagle Lake Crappie Length and Creel Regulations (LAC 76:VII.198)

There is a thirty (30) fish, eleven (11) inch minimum total length limit on black and white crappie at Eagle Lake in Madison Parish, Louisiana. The current regulation expires on October 1, 2019. The Inland Fisheries Division of the Department of Wildlife and Fisheries (DWF) received results and recommendations from the Eagle Lake crappie population assessment and angler opinion survey conducted by the Mississippi Department of Wildlife, Fisheries, and Parks (MDWFP) on June 3, 2019. Upon evaluation, DWF recommends removing the expiration date and making the current regulation permanent.

The Wildlife and Fisheries Commission finds that imminent peril to the public welfare requires adoption of a Rule upon shorter notice than that provided in R.S. 49:953(A), since the

current regulation will expire before a Notice of Intent could be finalized, resulting in disparate regulations on a single waterbody with no physical means of identifying the state boundary. Failure to take emergency action would subject Louisiana residents to potential criminal action due to more liberalized limits on the Louisiana portion of Eagle Lake from October 1, 2019 until a final Rule could be adopted. This Emergency Rule shall take effect October 1, 2019 and shall remain in effect for the maximum period allowed under the Administrative Procedure Act (120 days), or until adoption of a final Rule to permanently establish compatible size and creel limits for crappie on Eagle Lake, whichever occurs first.

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act, and under the authority of R.S. 56:6(25)(a), R.S. 56:325(C) and R.S. 56:326.3, the Wildlife and Fisheries Commission hereby declares:

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic life

Chapter 1. Freshwater Sport and Commercial Fishing

§198. Crappie Regulations - Eagle Lake

A. The recreational daily limit and total length limit for black crappie (*Pomoxis nigromaculatus*) and white crappie (*Pomoxis annularis*) on Eagle Lake located east of the Mississippi River in Madison Parish, Louisiana shall be as follows:

1. The recreational daily creel limit shall be thirty (30) fish, in the aggregate.
2. The minimum total length limit shall be eleven (11) inches.

B. This rule ~~shall become effective October 1, 2015~~ will remain effective provided identical minimum total length limit and daily creel regulations set by the Mississippi Wildlife, Fisheries and Parks Commission are implemented are effective on the Mississippi portion of Eagle Lake; otherwise the statewide crappie regulations will be effective on the Louisiana portion of Eagle Lake.

C. ~~This rule will expire four (4) years from its effective date or if Mississippi Wildlife, Fisheries and Parks Commission fails to maintain identical regulations for Eagle Lake at anytime during the 4 year period.~~

D. ~~Upon completion of the 4 year period, a crappie population stock assessment and crappie angler opinion survey will be conducted to allow for a comprehensive evaluation of the regulation for future management recommendations.~~

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(25) (a), R.S. 56:325(C) and R.S. 56:326.3.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 41: 1499 (August 2015); amended LR

Alfred R. Sunseri
Chairman

NOTICE OF INTENT

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Eagle Lake Crappie Length and Creel Regulations (LAC 76:VII.198)

Pursuant to the authority of R.S. 56:6(25)(a), R.S. 56:325(C) and R.S. 56:326.3, the Wildlife and Fisheries Commission hereby advertises its intent to extend the current crappie regulations on Eagle Lake, Madison Parish, Louisiana. The daily take and size regulations will be 30 fish per person with an 11-inch minimum length limit.

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic life

Chapter 1. Freshwater Sport and Commercial Fishing

§198. Crappie Regulations - Eagle Lake

A. The recreational daily limit and total length limit for black crappie (*Pomoxis nigromaculatus*) and white crappie (*Pomoxis annularis*) on Eagle Lake located east of the Mississippi River in Madison Parish, Louisiana shall be as follows:

1. The recreational daily creel limit shall be thirty (30) fish, in the aggregate.
2. The minimum total length limit shall be eleven (11) inches.

B. This rule ~~shall become effective October 1, 2015~~ will remain effective provided identical minimum total length limit and daily creel regulations set by the Mississippi Wildlife, Fisheries and Parks Commission are implemented are effective on the Mississippi portion of Eagle Lake; otherwise the statewide crappie regulations will be effective on the Louisiana portion of Eagle Lake.

~~C. — This rule will expire four (4) years from its effective date or if Mississippi Wildlife, Fisheries and Parks Commission fails to maintain identical regulations for Eagle Lake at anytime during the 4 year period.~~

~~D. — Upon completion of the 4 year period, a crappie population stock assessment and crappie angler opinion survey will be conducted to allow for a comprehensive evaluation of the regulation for future management recommendations.~~

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(25) (a), R.S. 56:325(C) and R.S. 56:326.3.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 41: 1499 (August 2015); amended LR 45:

The Secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the Commission to promulgate and effectuate this notice of intent and final rule, including but not limited to, the filing of the fiscal and economic impact statement, the filing of the notice of intent and final rule and the preparation of reports and correspondence to other agencies of government.

Family Impact Statement

In accordance with Act No. 1183 of 1999, the Department of Wildlife and Fisheries/Wildlife and Fisheries Commission hereby issues its Family Impact Statement in connection with the preceding Notice of Intent. This Notice of Intent will have no impact on the six criteria set out at R.S. 49:972(B).

Poverty Impact Statement

The proposed rulemaking will have no impact on poverty as described in R.S. 49:973.

Provider Impact Statement

This rule has no known impact on providers as described in HCR 170 of 2014.

Public Comments

Interested persons may submit written comments relative to the proposed rule to Ryan Daniel, Biologist Manager, Inland Fisheries, Department of Wildlife and Fisheries, 368 Centurylink Drive, Monroe, LA 71203-8732, prior to 4:30 p.m., October 4, 2019.

Alfred R. Sunseri
Chairman

Mr. Jason Adriance, Marine Fisheries Biologist, provided the presentation on the next agenda item, **Receive an Update on the 2019 Recreational Red Snapper Season Landings**. Mr. Adriance started with the landings table which showed estimates ending July 21, 2019 accounted

for 65% of the allotted quota. The average landings per week was about 7%. Next shown was a graph of the estimated landings with potential cross over dates. The last slide was a table which showed the voluntary electronic reporting weekly totals comparing 2019 with 2018. (A copy of Mr. Adriance's presentation is included in the Appendices Section of the Minutes.)

Commissioner Courville felt LA Creel was still the envy of the Gulf and complimented Assistant Secretary Patrick Banks and his staff for an outstanding job. The **Commissioner** then asked if there was a handle on the federally permitted charter boat landings for Louisiana and Mr. Adriance announced that closes at 12:01 a.m., August 2, 2019 and mentioned landings through July 21, 2019 amounting to 152,615.

The next agenda item, **Receive an Update on Trip Ticket Compliance on Vessels at Seafood Docks and at the Dealer, Number of Vessels, Docks and Dealers Checked, Number of Species Checked and Number of Warnings Written**, was given by Major Edward Skena, Enforcement Division. Major Skena began by introducing Lt. Bryan Marie, Supervisor of the Oyster Seafood Strike Force, who could answer any questions following the presentation. Major Skena noted there were 18 dealer inspections conducted specifically for trip ticket compliance over the last 2 months. The dealers were mainly dealing with oysters, but had other species such as shrimp, tuna, crabs, red drum and snapper. Also inspected at the docks or dealers were 11 vessels for catch and trip ticket compliance. The inspections resulted in 399 counts of failing to maintain records, 8 counts of failure to report commercial fishery data and 1 count of failure to comply with game fish shipping regulations. Some of these inspections were ongoing due to past records and once completed, more violations may be issued. Verbal warnings were also issued on minor trip ticket violations. Major Skena concluded stating they would continue inspecting boat dealers and fishermen for trip ticket compliance to make sure the commercial fisheries data was reported correctly. He mentioned they found more violations in the first 2 months than they wanted, but knew they would continue with this effort and would provide updates on the progress.

Chairman Sunseri commended the Enforcement Division for this effort, noting it was a huge undertaking of which he has had concerns about for a number of years. He felt this challenge would be dealt with in time and hoped those not complying could be educated so they can comply. Assistant Secretary Patrick Banks also commended the Enforcement Division for the job they do as landings data was a critical piece of information needed to manage the fisheries. **Chairman Sunseri** agreed with Assistant Secretary Banks and added he knew the landings data submitted to the National Marine Fisheries Service has been incorrect for years. The **Chairman** thought maybe an app could be used in the future. **Commissioner Samanie** echoed the sentiments and hard work by the Enforcement Division and suggested updating the trip ticket program.

Chairman Sunseri then announced the next agenda item would be to **Set December 2019 Commission Meeting Date**. Secretary Montoucet suggested having the Commission Meeting at the Lafayette Office as there is plenty of space and would provide the opportunity to see the new building. The Commissioners, by motion from **Commissioner Courville** and seconded by **Commissioner Smitko** agreed to hold their December 2019 meeting on December 5, beginning at 1:00 PM in Lafayette.

Chairman Sunseri then asked for **Public Comments**. Mr. Barry Rogers, fisherman from Terrebonne Parish, stated he had 2 issues which had to do with upgrading the penalty phases on closed season violations and the Authentic Louisiana Shrimp Program. He has been talking with Enforcement and other staff and at a recent meeting, the Shrimp Task Force proposed to buy drones for the shrimp industry. Any help from the Department and Commission on the penalty phases would be appreciated. **Commissioner Courville** asked for a presentation on the Louisiana Authentic Seafood Program and the associated penalties. **Commissioner Smitko** then asked to revisit the penalties for violations and asked if the Department was still working on this issue. General Counsel Garrett stated the criminal penalties would need to be assessed by legislation. Secretary Montoucet suggested Enforcement look at how many people have multiple violations and have the legislation allow for the confiscation of their boats which may shut down these people. **Commissioner Smitko** did not feel a judge would confiscate a boat, but thought after a person receives so many violations, he should be banned or even be given jail time. Secretary Montoucet added that Enforcement was working with the locals in their area and were also trying to get judges to agree with the Department on repeat offenders. Col. Sammy Martin suggested removing the word "shall" from legislation and make it "must". Mr. Peyton Cagle, Crustacean Biologist, added that the Shrimp Task Force set up a subcommittee to discuss violations and penalties and would begin those discussions on how to proceed at their next meeting. **Commissioner Courville** asked General Counsel Garrett, when preparing the legislative packets to share some of that information with the Commission and get their input on the front end.

Hearing no further comments, **Commissioner Courville** made a motion for **Adjournment**, seconded by **Commissioner Smitko** and unanimously approved.

APPENDICES



2019 Fall Inshore Shrimp Season

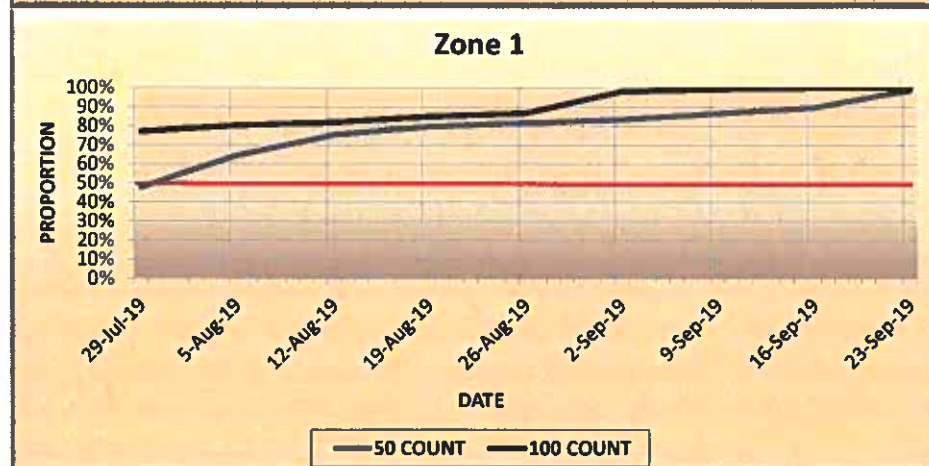
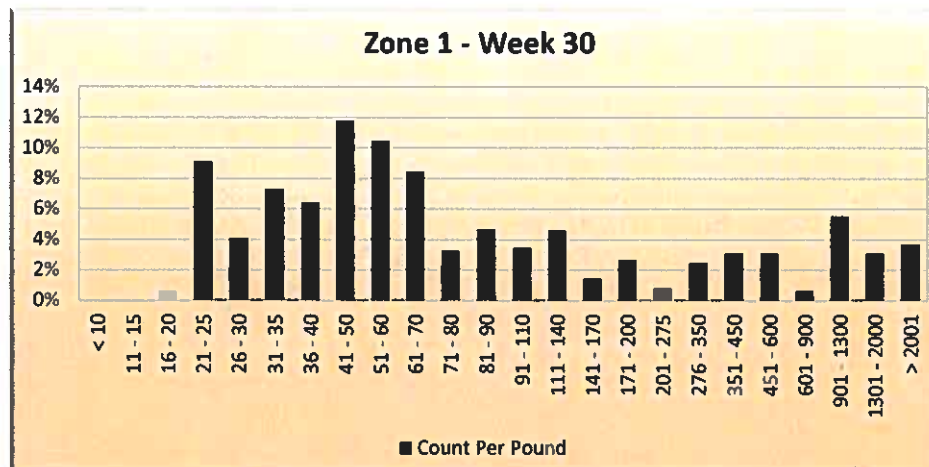
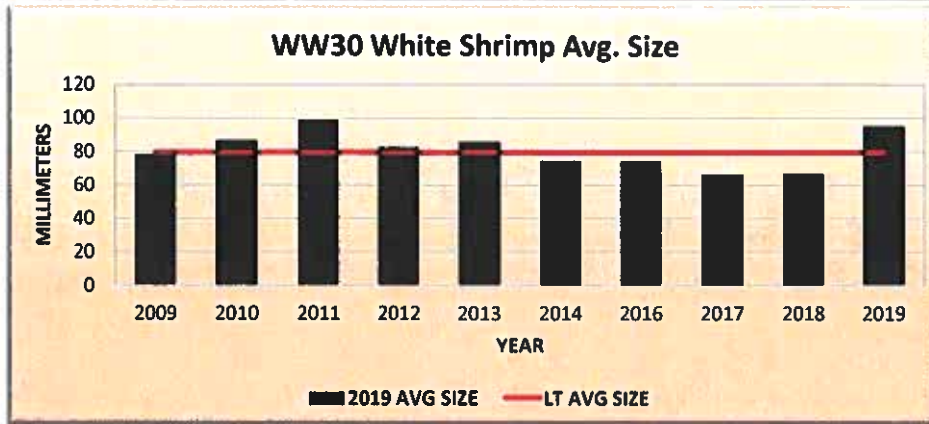
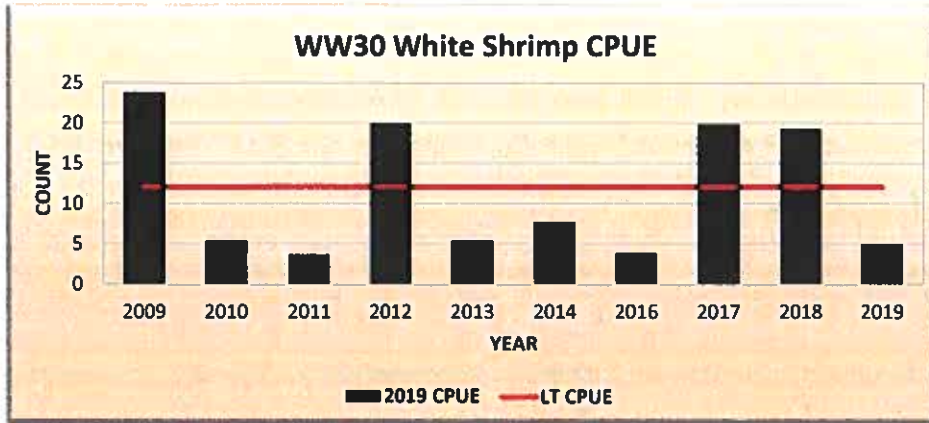
Peyton Cagle | LWFC Meeting | August 1, 2019



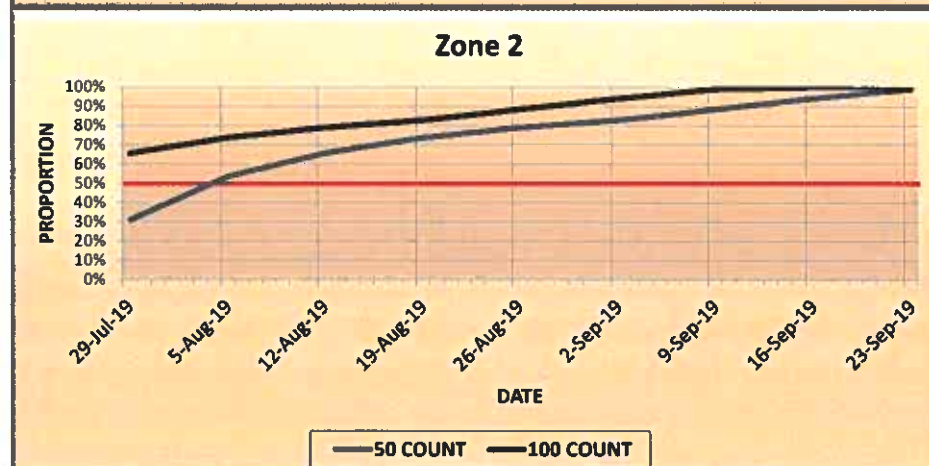
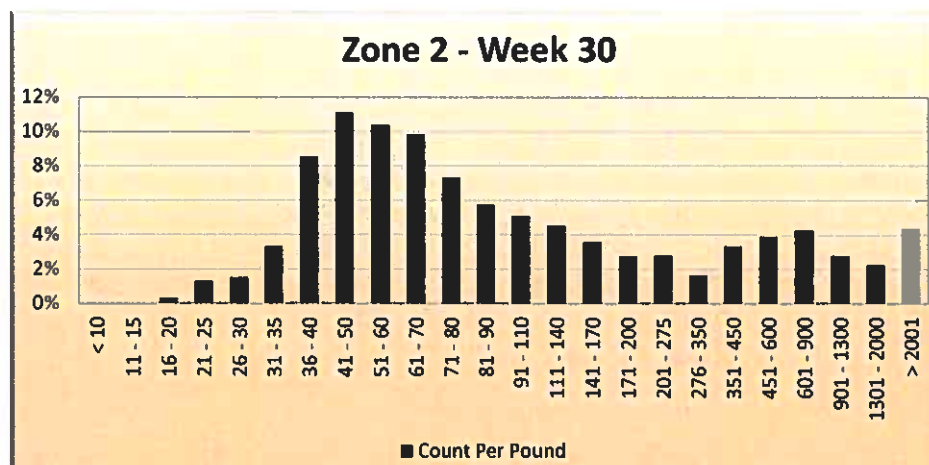
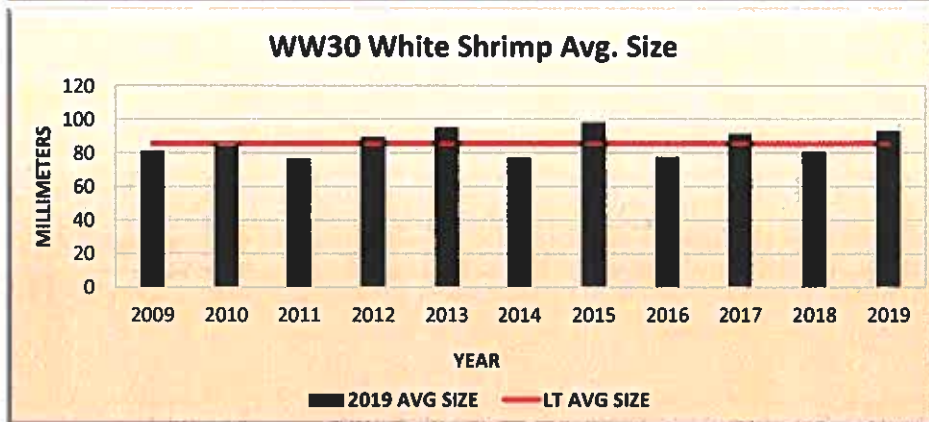
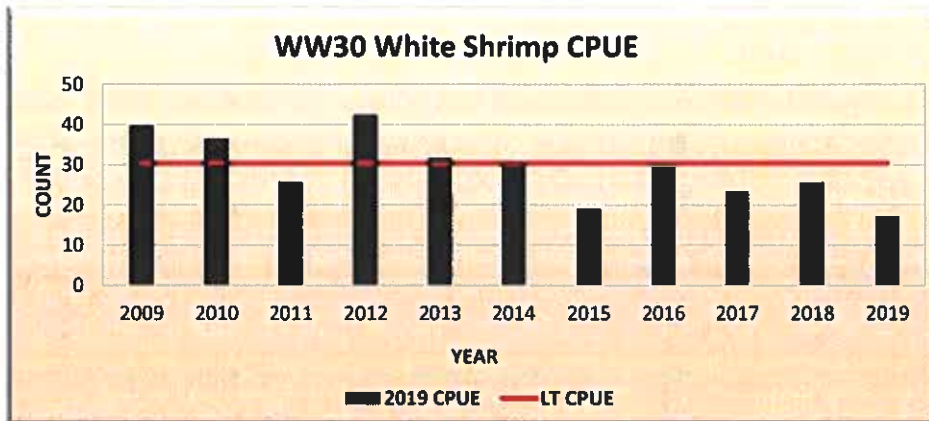
Louisiana Department of Wildlife and Fisheries Inshore Shrimp Zones



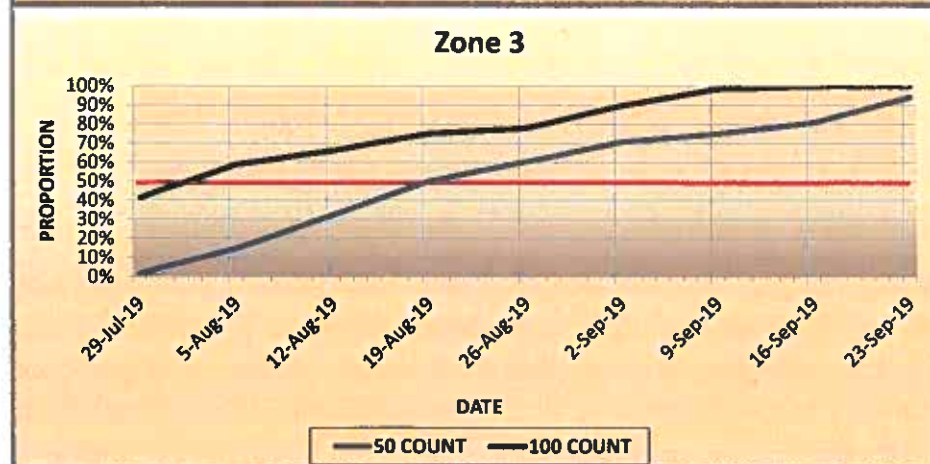
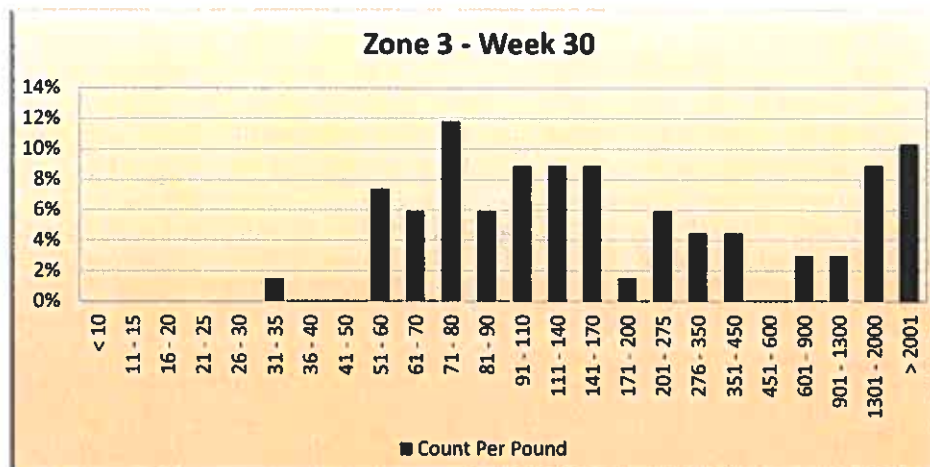
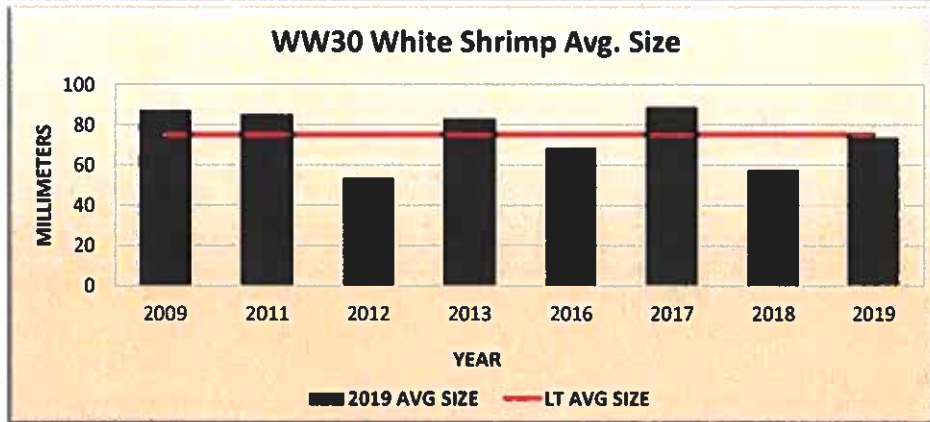
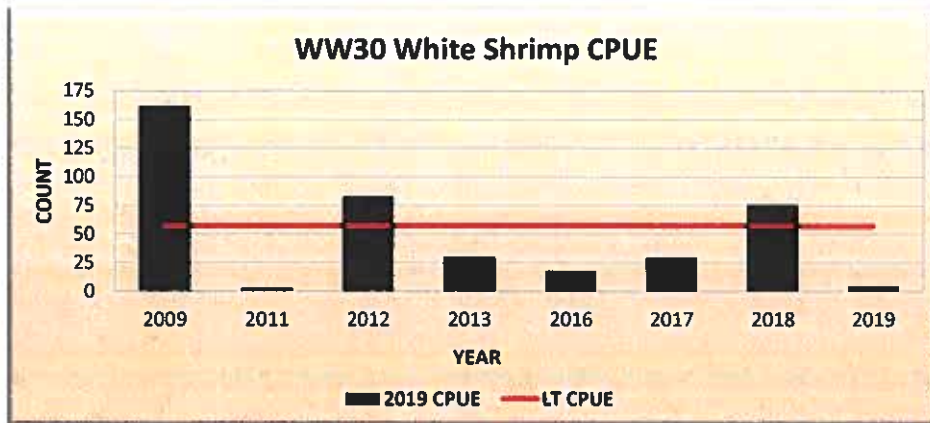
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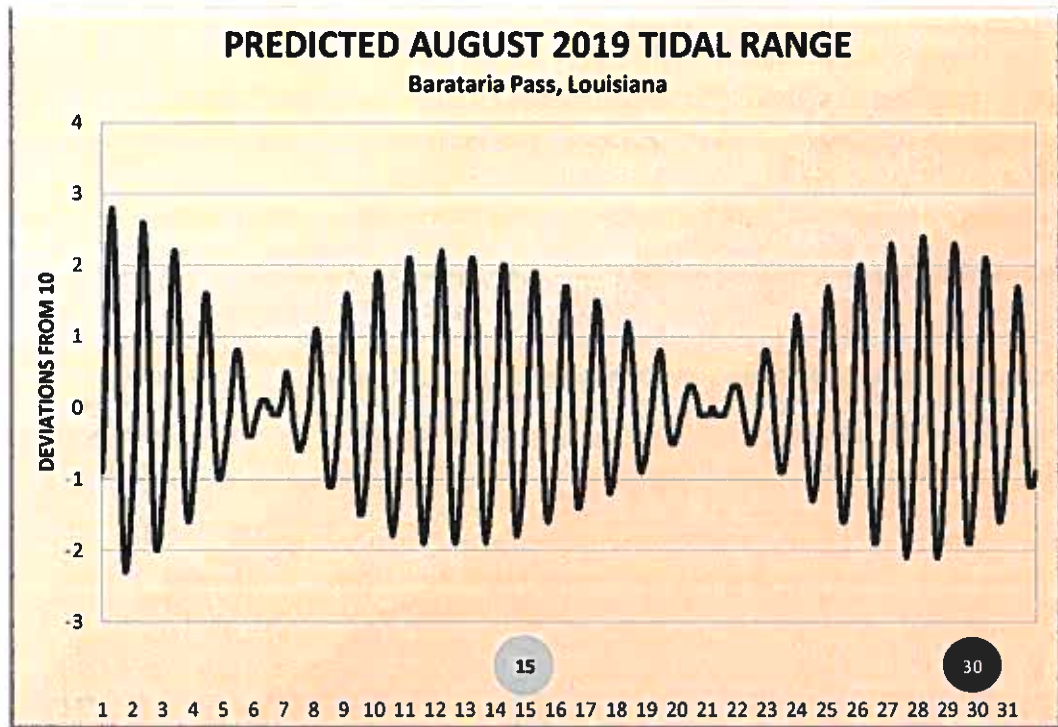


Zone 2

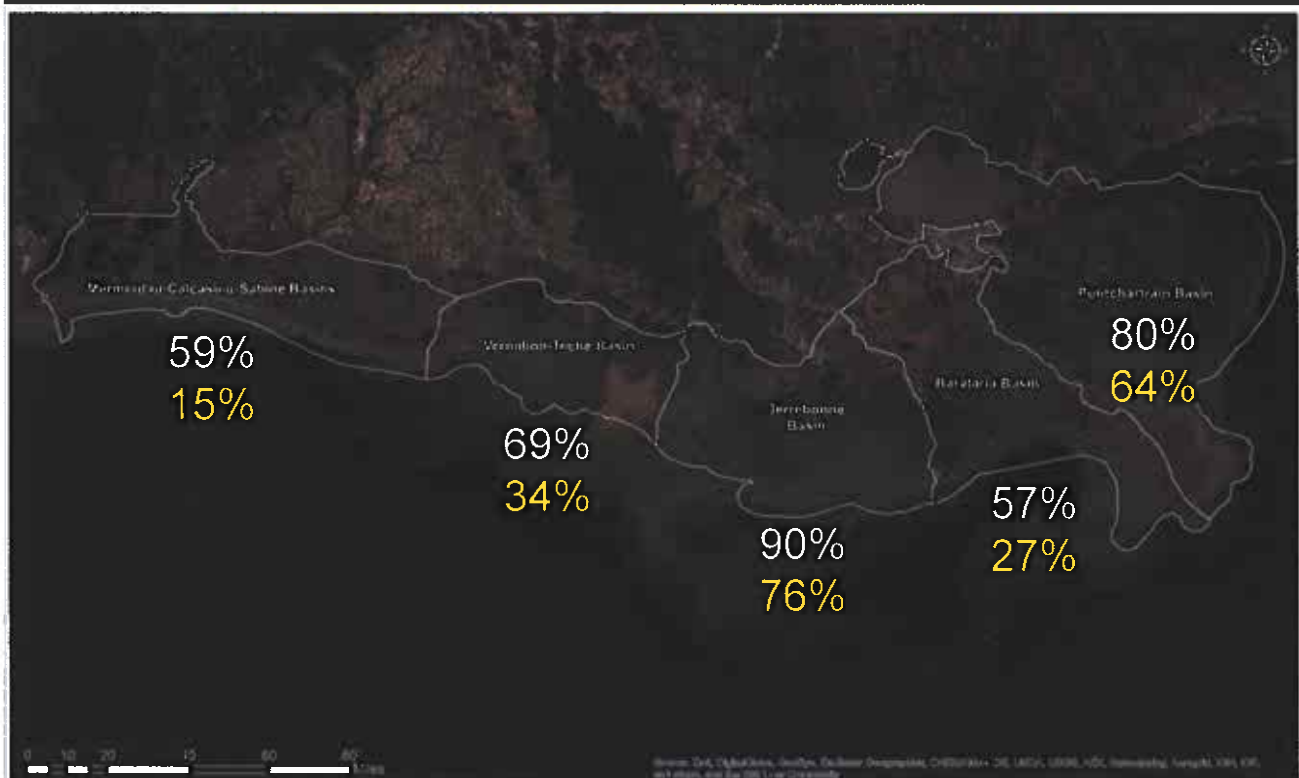


Zone 3





OPENING ON BASIN CROSSOVER DATE 8/5/19
PERCENTAGE BIGGER THAN 100 CT
PERCENTAGE BIGGER THAN 50 CT



RECOMMENDATIONS

- All state inside waters from the Mississippi/Louisiana state line westward to the Louisiana/Texas state line to open at 6:00 a.m. August 5, 2019.



QUESTIONS?

Peyton Cagle
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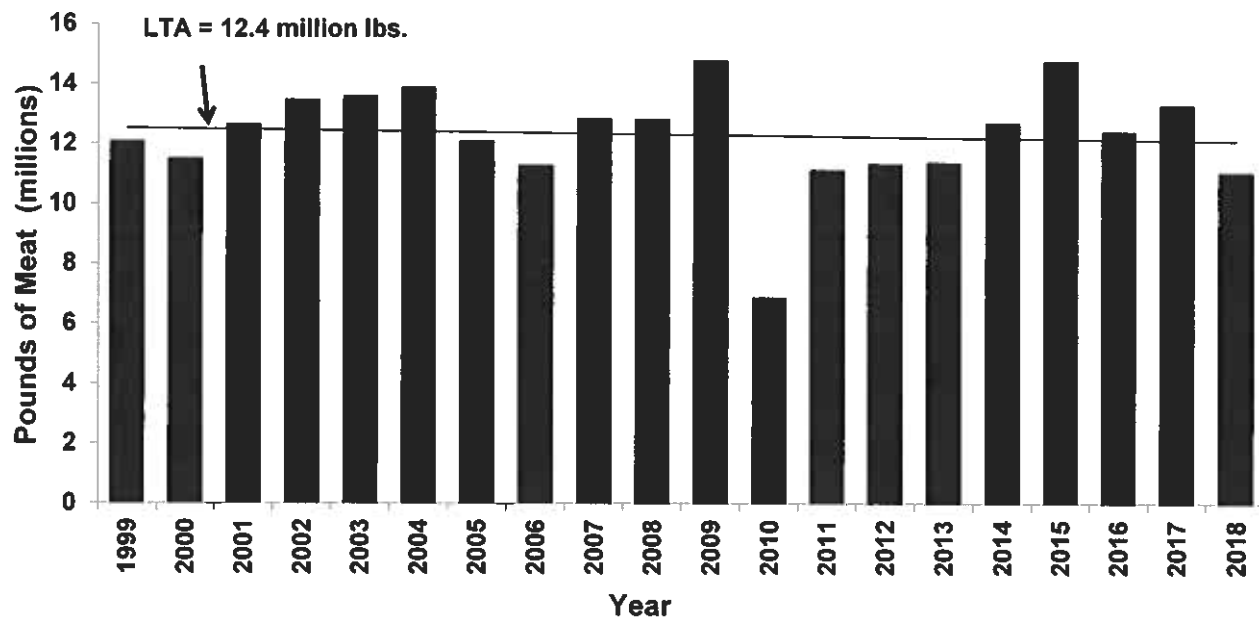




Sampling

-
- Map of the study area in the Gulf of Mexico, showing the coastline from Texas to Florida. Key locations marked include Sabine Pass, Galveston Island, Port of Galveston, Bayport, Baytown, Houston, and various islands and bays like Galveston Bay, Bay of Galveston, and Houston Bay. A scale bar at the bottom left indicates distances from 0 to 100 km. A legend at the bottom right explains the symbols used for different types of locations and features.
- Legend:
- Port of Galveston
 - Bayport
 - Baytown
 - Houston
 - Galveston Island
 - Galveston Bay
 - Bay of Galveston
 - Houston Bay
 - Galveston Bay
 - Bay of Galveston
 - Houston Bay

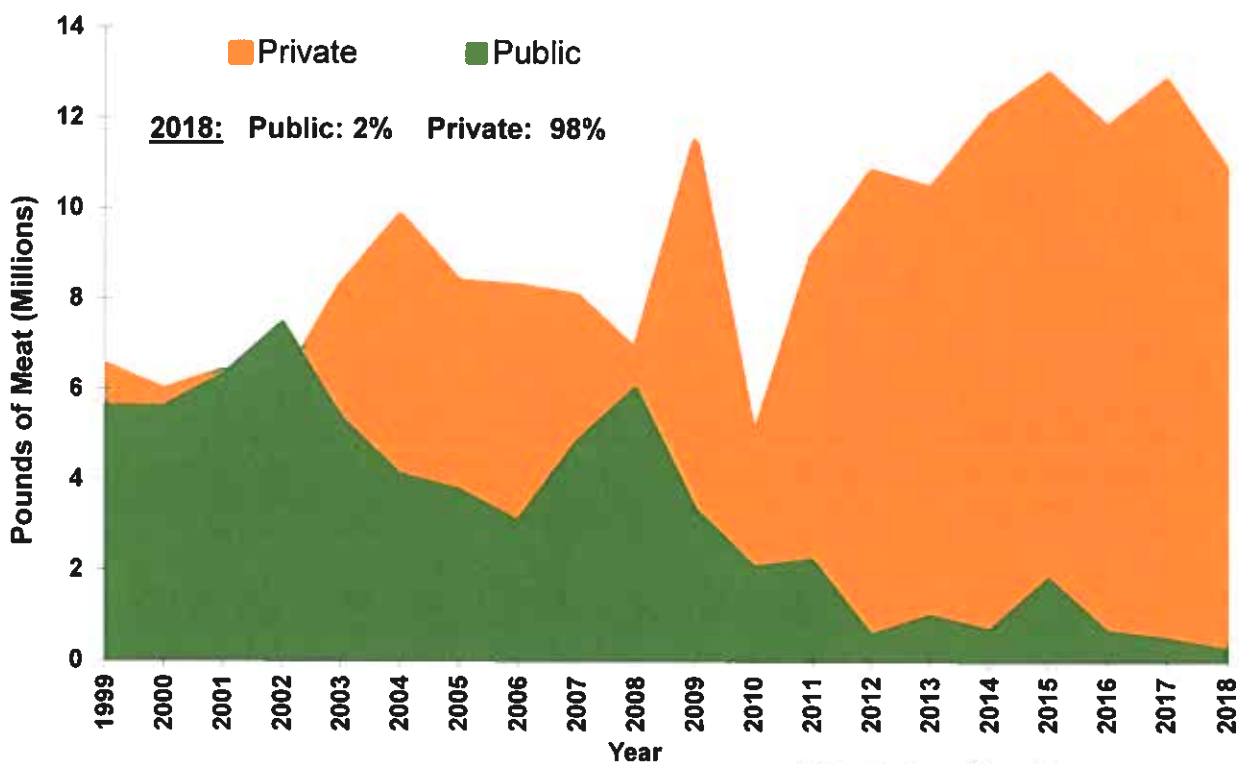
Louisiana Oyster Landings Combined



Note: Long-term average (1999 to 2017) for private landings is 8.3 million pounds. LTA for public landings is 2.8 million pounds.

PRELIMINARY DATA - SUBJECT TO CHANGE

Oyster Landings: Public vs. Private



Note: Long-term average (1999 to 2017) for private landings is 8.3 million pounds. LTA for public landings is 2.8 million pounds.

PRELIMINARY DATA - SUBJECT TO CHANGE

2019 Public Ground Oyster Stock Assessment

Availability in barrels (1 barrel = 2 sacks)

GREEN = % Increase, RED = % Decrease compared to 2018.

Area	Seed	Seed %	Sack	Sack %	Total	Total %
Lake Borgne/MS Sound	10,765	-78%	450	-99%	11,214	-86%
East of MS River, South of MRGO	0	-100%	0	n/a	0	-100%
Hackberry Bay	3,108	+53%	337	-77%	3,445	-1%
Lake Chien/Felicity	36	-92%	36	n/a	72	-84%
Sister Lake/Bay Junop	55,229	+14%	7,671	-65%	62,900	-11%
Calcasieu - East Side	15,209	+72%	11,588	+26%	26,797	+49%
Calcasieu - West Cove	62,005	+187%	83,367	+16%	145,372	+55%
Statewide Totals	146,351	+12%	103,449	-24%	249,800	-6%

PRELIMINARY DATA - SUBJECT TO CHANGE

2019/2020 Public Ground Oyster Season Recommendation

Area/Public Ground	Season Recommendation	Limit
East of MS River, North of MRGO	No Season	
East of MS River, South of MRGO	No Season	
Hackberry/Barataria Basin	No Season	
Lake Tambour, Lake Chien, Lake Felicity, Deep Lake	No Season	
Bay Junop and Lake Mechant	No Season	
Sister Lake - Bedding	Open November 18, 2019 (One day only)	No more than 15% of non-living material allowed in bedding loads.
Sister Lake - Sacking	Open November 19, 2019	25 sacks/vessel/day (take and possession)
Vermilion/Atchafalaya Basin	No Season	
Calcasieu Lake (East and West)	Open November 1, 2019	10 sacks/vessel/day (take and possession)



QUESTIONS?

Carolina Bourque
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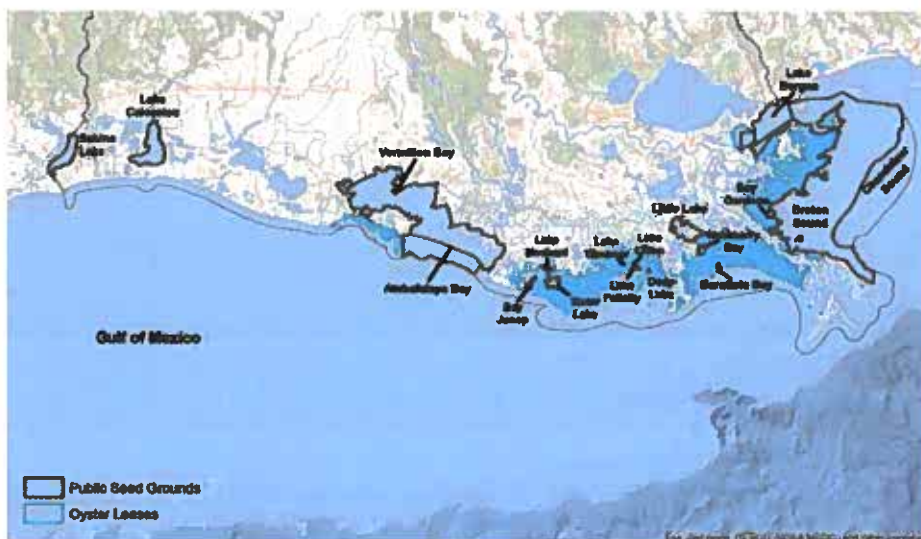
Notice of Intent – Oyster Leasing Policies and Procedures

Cole Garrett | WFC Meeting | August 1, 2019

Goals of the Notice of Intent

- Update the application process for leases and renewals
- Establish a protocol to designate access channels on subservient leases
- Establish rules governing joint leasing of water bottoms (Dual Claim Lease)
- Provide for preferential rights and rules governing lifting the moratorium
- Provide an option for LDWF desktop examination in lieu of private survey
- Incorporate long standing policies of the oyster lease section into rule
- Generally clean up and organize the rules





Freshwater Diversions and Avenal Lawsuit

- In 1989, in anticipation of the Caernarvon Freshwater Diversion into Breton Sound, LDWF introduced indemnification language into its oyster leases for coastal restoration.
- In 1990, LDWF implemented the Caernarvon Oyster Transfer relay program to allow leaseholders in the impact area to relocate their leases to designated areas outside of the zone. Some participated, others chose not to.
- Caernarvon became operational in September of 1991.
- Plaintiffs filed a class action law suit in March of 1994, asserting that their oyster leases were destroyed or damaged by freshwater intrusion due to Caernarvon.
- A jury trial returned a verdict of over \$1B judgment against the state for damage to 63,000 leased acres; a value of \$21,345.00 per acre.
- The Louisiana Supreme Court later ruled that of the 204 leases in the class action, 192 of them were deemed to have valid indemnification clauses in the leases and not entitled to compensation, and the remaining ones had prescribed by the two year statute of limitations for damages, and had not been "taken" by the state.
- The trial court ruling was enough for DNR to request the WLF Commission to place a moratorium on leasing so as to limit liability exposure for future coastal restoration projects.



Oyster Lease Moratorium and Act 808

Moratorium

- As a result of Avenal, and upon the request of DNR, the oyster lease moratorium was put into place by Resolution of the WLF Commission in March of 2002. It has been in place ever since.
- The moratorium allowed for renewals to be issued by the department and for relocation of leases under the Oyster Lease Relocation Program (Prior to 2006)
- The moratorium did not allow for "contouring" of leases (expansion during renewal to take up eroded water bottom), nor the continuation of the auction established to lease acreage terminated for default in payment of rent.
- Applications and fees were held pending a resolution to the moratorium unless otherwise relinquished.
- Partial lifting of the moratorium occurred in 2007 when the WFC allowed for processing of pending applications.

Act 808

- In the 2008 Regular Legislative Session, Act 808 passed initiating a process by which to lift the moratorium on oyster leasing.
- It mandated that rules governing the moratorium lifting be developed in conjunction with a special committee composed of LDWF, DNR, Oyster Task Force, Louisiana Landowners Assoc., LA Oil and Gas Assoc., and LA Mid-Continent Oil and Gas Assoc.
- Provided that prior to lifting the moratorium, LDWF should examine leases that were not renewed since 1996 due to DNR's recommendation that their leases would be in an impact area of a coastal restoration project.



Oyster Lease Moratorium and Act 808

Act 808 Committee Recommendations

- Committee delivered recommendations in 2009
- Most could be implemented by rule:
 - Biological assessments in conjunction with CUP applications (DNR & DWF)
 - 90-day landowner contest period for new leases (WFC & SLO)
 - 90-day lease application withdrawal period (WFC)
 - Rent-delinquent leases become new leases (WFC)
 - 500' expansion of existing leases (WFC)
 - Lottery system for new leases, after lifting (WFC)
- Two recommendations require legislation:
 - Liability exemption for pre-existing oil and gas activity ("first come, first served")
 - Reevaluation of State ownership of leased water bottoms 3 years before lease renewal
- All recommendations should be enacted before moratorium is lifted
- All were assigned equal weight by the committee
- All members approved all recommendations
- Recommendations as a whole are the result of compromise



Legislative Action



Act 595 of the 2016 Legislative Session (HB 902)

Oyster Task Force Initiative

- Legislative instruments were introduced every year 2011-2015 to implement the recommendations of the Act 808 Committee – none succeeded
- Oyster Task Force created a Moratorium Lifting Subcommittee
 - To develop proposed legislation, starting from scratch
 - Met regularly throughout 2015 and into 2016
 - Invited oil and gas, landowner, and other stakeholders to advise the OTF committee – Only OTF members could vote
 - Invited DWF, DNR, CPRA, DOJ, SLO to advise the OTF committee – Most attended
 - Developed the legislation that became HB 902
 - Oil and gas and landowner representatives have been involved in discussions once the bill was filed
 - Resulting bill was one of compromise and generally agreed upon by all stakeholders



Act 595 of the 2016 Legislative Session (HB 902)

Significant Aspects – Subservience to Existing Oil & Gas Activities

- Protects Oil & Gas Permittees for Preexisting Activities and Structures
 - First come, first served for permitted activities
 - Added protection for unpermitted activities that preexist new oyster leases (prior to 1980 when the CUP process began)
 - Subservience applies only to those oyster leases applied for after July 1, 2016 (not existing leases, Phase 0 or Phase 1 leases)
 - Subservience only extends to those activities and areas designated in the permit, or 75' from centerline for pipelines and 250' from perimeter of well, shell pad, or facility.
 - Establishes ability for oil & gas to designate single access channels to cross subservient oyster leases
 - 50' from center of designated access channel
 - 80' spoil area on one side of the channel
 - Precludes new leases within 75' of centerline of pipelines on purchased right of way



Act 595 of the 2016 Legislative Session (HB 902)

Significant Aspects – Application Processes

- No requirement to reevaluate State claim to water bottoms before renewal
 - Instead, new lease applications require:
 - Public notice of all new leases (90 days)
 - SLO determination of State claim to water bottoms
 - Opportunity to object
 - Allows withdrawal of lease application upon protest or determination State does not claim water bottoms
 - Adjudication of claims to water bottoms is available anytime
- Requires CPRA review and authorizes buffer zones along coast
 - Purpose is to protect sensitive and eroding coastline
 - New leases, expansions and *renewals* would be evaluated in buffer zones
 - Pending MOU between LDWF and CPRA will govern implementation
 - *Typically 50' buffer from existing coastline for new leases and expansions*
 - *Typically no buffer required for existing oyster leases*
 - *Evaluation of leases in direct impact areas of Integrated Coastal Protection Projects where construction is imminent*



Act 595 of the 2016 Legislative Session (HB 902)

Significant Aspects – Preferential Phases of Lifting the Moratorium

Phase 0 – Processing Pre-Moratorium Lease Application Backlog

- +/- 40 lease applications pending
- None processed since 7/1/2016 because of new application procedures
- NOT subject to subordination – applied for prior to 7/1/16

Phase 1 – Right of First Refusal for Non-Renewed Avenal Leases

- 274 leases – only available to the lessee of record
- Notice provided via certified letter and 60-day publication on website

Phase 2 – Incorporation of Adjacent Water Bottoms for Existing Leases

- 500' expansion between leases or towards eroded land
- New acreage will be subordinate to preexisting oil & gas operations

Phase 3 – Right of First Refusal for Lessees under Private Lease

- Only available to those private leases executed and recorded prior to 2/1/16
- Recognized as valid up to this point, but not after for purposes of harvest

Phase 4 – 1st Lottery Phase

- Random selection to determine appointment priority, 1 lottery entry per applicant

Phase 5 – 2nd Lottery Phase (Optional)

- Same provisions as 1st Lottery Phase – Secretary's discretion



Act 570 of the 2016 Legislative Session (HB 1130)

Purpose – To address the dual-claimed lands problem

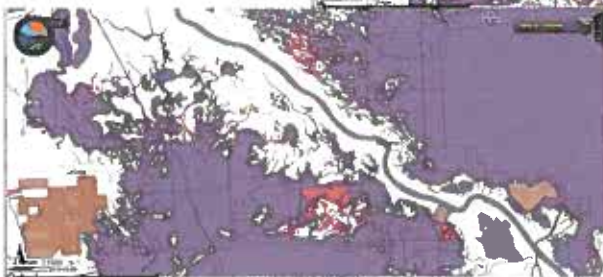
- Louisiana's coastal area is rapidly eroding, subsiding, and otherwise disappearing
- Private persons hold record title to vast majority of coastal area
- Land that erodes into navigable water bodies becomes a public thing belonging to the State (CC 450, *Miami Corp.*)
- Private record owners and the State both claim ownership of the same water bottoms
- In the vacuum created by LDWF moratorium on oyster leases, private leases have been issued
- Without judicial resolution, true ownership is in dispute
- State (LDWF) receives the benefit of two presumptions
 1. Harvest of oysters off unleased water bottoms is prohibited and all oysters in possession are presumed to be from state waters (56:424)
 2. Once a reasonable investigation of ownership is complete and a determination made that the State owns the water bottom, no claim by any person shall be valid until adjudicated by a court (AG Op. 08-0290)



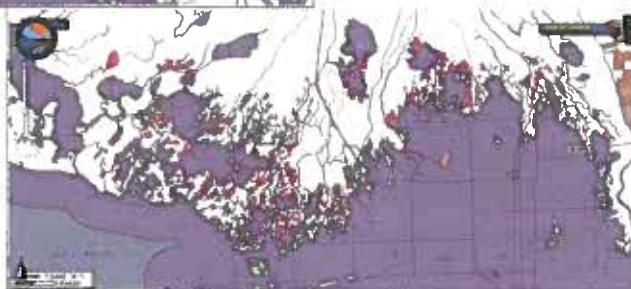
St. Bernard Parish



Plaquemines Parish



Terrebonne/Lafourche



Act 570 of the 2016 Legislative Session (HB 1130)

Purpose – To reduce litigation arising from dual claim conflicts

- LDWF and private claimants can agree to grant State leases on dual claimed water bottoms
 - Strictly voluntary
 - All parties reserve their rights and claims
- Litigation is unnecessary to preserve claims
- LDWF receives the full \$3/acre/year as required by statute
- Reduces the litigation that raising the moratorium under Act 570 alone would engender
- HB 1130 and HB 902 were negotiated and tied together – the effectiveness of each instrument conditioned on the passage of the other



Act 570 of the 2016 Legislative Session (HB 1130)

Purpose – Legitimize oyster harvest from private leases on state claimed water bottoms

- Oyster harvest from State-claimed water bottoms is authorized only on State issued oyster leases
- Under law, LDWF could not recognize private leases on State water bottoms
- Oysters fished from private leases on State water bottoms were considered contraband and were subject to seizure and dumping
- Establishes a presumption of validity for private leases on "dual claimed" water bottoms that were executed and properly recorded by 2/1/16
- Provides a mechanism for harvest of private oyster leases on state claimed water bottoms until Phase 3 of the moratorium lifting is complete



Proposed Rule



Goals of the Notice of Intent

- Update the application process for leases and renewals
 - make it consistent with the new law
 - public notice, protest periods, CPRA review for buffer zones, etc.
- Establish a protocol to designate access channels on subservient leases
- Establish rules governing joint leasing of water bottoms (Dual Claim Lease)
- Provide for preferential rights and rules governing lifting the moratorium
- Provide an option for LDWF desktop examination in lieu of private survey
- Incorporate long standing policies of the oyster lease section into rule
- Generally clean up and organize the rules



Establishes New Procedure for Leases

Applications for New Leases – Subject to Preexisting CUP Activity

- Post notice of application for lease on LDWF website for 90 days
- Concurrently LDWF submits applications to the State Lands Office and CPRA for determinations regarding ownership and buffer zones
 - Applicant will have 30 days to amend application if needed
- Concurrently, private claimants may protest ownership determination of the water bottom in writing
 - SLO Administrator has 90 days to evaluate the claim and make a preliminary determination
 - SLO Administrator may evaluate any additional information and make a final determination of ownership no later than 180 days from protest
- Applicant may withdraw application within 120 days of registration or within 30 days of determination of ownership
- New Leases will not be issued in the following instances:
 - Within 75' of the centerline of a purchased pipeline right of way
 - Within a designated public oyster seed ground or reservation
 - Within the boundaries of a Wildlife Management Area
 - Within 50' of the outer boundary of a USACE designated navigable channel



Modifies Lease Renewals

Applications for Renewals

- First right of renewal for lessees of record, provided that the lease is capable of supporting oyster populations – 15 year successive terms
- Must be a bona fide resident, full age of majority and appear in person
- Leases or portions of leases will not be renewed if the applicant fails to meet the residency requirements, or when the water bottom is:
 - Determined by LDWF to be incapable of supporting oyster populations
 - Within a designated public oyster seed ground or reservation (Sec. discretion)
 - Within the boundaries of a Wildlife Management Area (Sec. discretion)
 - Within an area that CPRA determines is essential for integrated coastal protection or a buffer zone is necessary to protect sensitive lands (Rare)
- In the event that a lease is not renewed, lessees have until July 1 to remove improvements – Secretary may extend by 90 days for good cause
- "Take Ups", expansions or lease reconfigurations are treated as new lease applications and will not be processed as a renewal



Subordination and Designation of Access Channels

New oyster leases are subordinate to preexisting oil & gas permits/activity

- Does not apply to existing leases, Phase 0 or Phase 1 Leases
- Applies to new oyster leases
 1. where a permit application for such activity predates the oyster lease application
 2. where the structure was constructed prior to 1980
 3. Where a single access route is designated to cross an oyster lease to perform work on such a structure
- When an access channel to cross subservient oyster leases is designated:
 - 50' from center of designated access channel
 - 80' spoil area on one side of the channel
 - 1. If only one access route is permitted, then it is the sole route
 - 2. If multiple, then the permittee designates one to LDWF
 - 3. If the structure predates CUP permits, then the permittee submits a proposed access route to LDWF in writing
 - Oyster lease holder has 30 days to object and show good cause
 - If objection is timely made, the parties have 30 days to designate a mutually agreeable access route
 - Should the parties fail to do so, the Secretary will designate one



Desktop Examination, Survey Standards and Data

LDWF Desktop Examination

- Provides that lease applicants may request a "Desktop Examination" in lieu of providing their own licensed survey plat
- Establishes a fee of \$260 – based on the employee-hours needed to perform such a task
- At the option of the applicant, not required

Survey Standards

- All surveys must utilize NAIP or imagery with resolution of 1 meter

GIS Data

- Establishes procedure for public to obtain oyster lease GIS data and sets associated fees
 - \$5 per lease
 - \$50 per USGS 24K Section
 - \$200 for the entire dataset



Joint Leasing – Dual Claimed Water Bottoms

Dual Claim Agreement

- At anytime LDWF may enter into a Dual Claim Agreement with a private claimant for the leasing of dual claim water bottoms for oyster cultivation
- Requires consultation with the State Lands Office
- Cannot contain any restrictions on the applicant more burdensome than traditional state-issued oyster leases
- Shall remain in effect:
 - For the entire term and renewal of any state-issued lease is issued thereon
 - Until ownership of the dual claim water bottoms is finally adjudicated
 - Until such time that either party withdraws from the agreement when no state-issued lease is burdening the water bottom

Dual Claim Lease

- An oyster lease issued by LDWF on dual claim water bottom subject to a "Dual Claim Agreement"
 - Private claimant holds record title
 - State claims ownership as a sovereign navigable water bottom
 - Title has not been adjudicated to either party
 - No effect on ownership of water bottoms or underlying minerals



Joint Leasing – Continued

- Executed on a LDWF oyster lease form and is subject to the same rules and regulations that apply to a traditional state-issued oyster lease
 - Contains the stipulation that the existence or term of the lease does not affect ownership of the water bottom or mineral interests
- LDWF shall receive the same rental payment as is required for a traditional state-issued lease - \$3/acre/year
- A private claimant may negotiate a private rental payment as follows:
 1. State-issued oyster leases in effect as of 7/1/16 are not subject to private rental payment
 2. Any private rental payment must be stipulated in the Dual Claim Agreement
 3. Private rental payment may not exceed the \$3/acre/year received by LDWF
 4. Private rental payments shall be paid directly to the private claimant
 5. Consequences of non-payments cannot be harsher than LDWFs
- Dual Claim Lease issued pursuant to a Dual Claim Agreement supersedes any existing leases issued by the private claimant
- ~~• An oyster lease applicant may refuse a Dual Claim Lease and request LDWF issue a traditional state-issued oyster lease—Sec. discretion~~
 - ~~• At lessees risk—Will hold LDWF harmless for any claims of ownership~~



Rules Lifting the Oyster Lease Moratorium

Phase 0 – Processing Pre-Moratorium Lease Application Backlog

- +/- 40 lease applications pending
- None processed since 7/1/2016 because of new application procedures
- NOT subject to subordination – applied for prior to 7/1/16
- May be issued as Dual Claim Leases

Phase 1 – Right of First Refusal for Non-Renewed Avenal Leases

- 274 leases – only available to the lessee of record
- Notice provided via certified letter and 60-day publication on website
- Only lessee of record is eligible to apply

Phase 2 – Incorporation of Adjacent Water Bottoms for Existing Leases

- 500' expansion between leases or towards eroded land
- 180-day application period
- New acreage will be subordinate to preexisting oil & gas operations

Phase 3 – Right of First Refusal for Lessees under Private Lease

- Only available to those private leases executed and recorded prior to 2/1/16
- 60-day application period and notice by posting on LDWF website
- Recognized as valid up to this point, but not after for purposes of harvest

Phase 4 – 1st Lottery Phase

- Random selection to determine appointment priority, 1 lottery entry per applicant
- 60-day notice by publication on LDWF website

Phase 5 – 2nd Lottery Phase (Optional)



Incorporation of Long-Standing Policies

No leases in WMAs or Public Oyster Seed Grounds

- These areas are set aside for use of the general public – granting exclusive use of the water bottom to an individual is not consistent with the purpose

Heritability

- Applications are heritable contingent upon proof of death and heirship
- 180 days from death of applicant to appoint a representative
- Leases will not be renewed if inherited by non-resident

Mandate of Compact Lease Configurations

- Applications may not connect two larger otherwise non-contiguous water bottoms by applying for a cut, bayou, or canal

Splitting of Leases

- No lease may be split except by CPRA acquisition or judicial decree
- Alternative lease numbers will be issued, but not treated as a new lease

Default in Rental Payments

- Rent due on Jan. 1 – Allowance for late payment (60 days)
- Notice of delinquency published on Feb. 1
- 10% late penalty for payment after Feb. 1; automatic cancellation





ALLIGATOR PROGRAM – REGULATIONS CHANGES

Jeb Linscombe | LWFC | August 1, 2019

Temporary Tag Fee Reduction

- **Formal recommendation from the Louisiana Alligator Farmers & Ranchers Association**
- **\$1 tag fee reduction for 2020 & 2021**
- **Alligator Program staff asked to perform a budget projection with a \$1 tag fee reduction**



Budget Projection

LA Alligator Resource Fund	FY2017	FY2018	FY2019	FY2020	FY2021	FY2022
Beginning Balance	4,082,180	3,955,680	4,804,728	3,273,914	2,989,253	3,156,255
Total Revenue	2,109,612	2,312,526	1,940,228	2,057,256	2,057,256	2,057,256
Total Expended & Encumbered	2,636,310	1,463,477	3,471,042	2,341,917	1,890,255	1,939,897
Ending Balance	3,955,680	4,804,728	3,273,914	2,989,253	3,156,255	3,273,613

NOTICE OF INTENT

**Department of Wildlife and
Fisheries
Wildlife and Fisheries
Commission**

Alligators
(LAC 76:V.701)

(k). \$4 for each alligator hide tag, except for license years 2020 and 2021 in which the fee for each alligator hide tag shall be \$3;



Reduction Of Minimum Temperature In Alligator Grow Out Sheds

- Formal recommendation from the Louisiana Alligator Farmers & Ranchers Association
- Antiquated regulation nearly 4 decades old
- Industry research has proven that under some conditions temperatures as low as 70° Fahrenheit provide a calmer environment while maintaining adequate grow out rates

NOTICE OF INTENT

Department of Wildlife and
Fisheries
Wildlife and Fisheries
Commission

Alligators
(LAC 76:V.701)

v. all controlled-temperature alligator grow out sheds (environmental chambers) shall be of a design acceptable to the department. Each shed shall maintain a minimum water and air temperature of 80° 70° Fahrenheit.





NOTICE OF INTENT and DECLARATION OF EMERGENCY

Crappie Creel and Size Limits in Eagle Lake, Madison Parish

Ryan Daniel | Louisiana Wildlife and Fisheries Commission Meeting | August 1, 2019

Eagle Lake Information

- 4,275 acres
- Inactive oxbow of MS River - north of Vicksburg
- Border lake - lies east of MS River, state line runs through center of lake; shared by Madison Parish and Warren County
- All public access is in Mississippi
- Fisheries sampling conducted by Mississippi Department of Wildlife, Fisheries and Parks (MDWFP)
- LDWF provides consultation, management recommendations, and law enforcement
- Less than 5% of all anglers from LA (2018 MDWFP angler survey)
- 4 closest parishes have combined population of 42,800*
- Driving distance from closest LA town (Delta, LA) is 48.4 miles*



*from FEIS prepared by J. Isaacs



Summary of Eagle Lake Crappie Fisheries

- Louisiana crappie regulations prior to 2015 (50/day, no MLL)
- Crappie anglers comprised the highest percentage of anglers since 2012 (MDWFP spring angler creel surveys 2012 – 2018)
- White crappie have been stocked by MDWFP since 2011 to compensate for poor recruitment
- 78% of anglers interviewed in the 2015 angler creel survey indicated that they would support a minimum length on crappie (11% were not in favor)
- 2015 - MDWFP recommended concurrent boundary water regulations that would require further action in 2019, after 4-year population assessment and evaluation of benefits.

30 per day and 11 inch MLL



Notice of Intent

Pursuant to the authority of Louisiana Revised Statutes, Title 56:6(25)(a), 325(c), and 326.3, the Wildlife and Fisheries Commission hereby advertises its intent to extend the current crappie regulations on Eagle Lake, Madison Parish. The daily take and size regulations will be 30 fish per person with an 11-inch minimum length limit.

- Adopted October 1, 2015 with 4-year assessment period
- Action required by October 1, 2019
 - maintain current boundary water regulations
 - Revert back to LA regulations on LA waters



Goal of Proposed Regulation (30/day, 11 in. MLL)

- Protect age-1 and age-2 crappie
- Allow more crappie to grow to a larger size
- Maximize yield based on population modeling from 2014 lead net sampling (MDWFP)
- Increase recruitment – protect breeding stock less than 11 inches
- Satisfy angler requests



Photo Credit: Eagle Lake 2018
Reel Facts; MDWFP



Results of Temporary Regulation

As reported by MDWFP (2015 – 2019)

- Mean weight and lengths of harvested crappie were at or above target values predicted by simulation models.
- Increased catch rates of 13 to 15 inch crappie were reported.
- Angler catch per hour (CPH) has increased from 0.8 to 1.0.
- Abundance of black crappie in 2018 lead net sampling exceeded white crappie for first time in many years.



Recommendation

- To adopt a daily creel limit of 30 crappie per day with a minimum length limit of 11 inches to be effective beginning October 1, 2019.
- A Declaration of Emergency will be required to maintain regulations throughout the NOI process (November 20).
- Based on evaluation, MDWFP intends to maintain current regulations on Eagle Lake and urges LDWF to maintain also.
- LDWF Inland Fisheries reviewed available data provided by MDWFP and supports implementing reciprocal regulations on the border lake.
- The adoption of the proposed regulations will ensure regulatory consistency throughout the water body.
- Less than 5% of Eagle Lake crappie anglers are LA residents, no access in LA.



Declaration of Emergency

- Current regulation expires Oct. 1, 2019
- Sampling results and recommendations received from MDWFP on June 3, 2019 for evaluation and draft NOI
- DOE is necessary to extend the current regulation from October 1, 2019 until the NOI is finalized and published – anticipated November 20th

**Ryan Daniel
Inland Fisheries District 2
Louisiana Department of Wildlife and Fisheries
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2019 Recreational Red Snapper Season Update

Jason Adriance | LWFC Meeting | August 1, 2019

2019 Red Snapper Weekly Landing Estimates

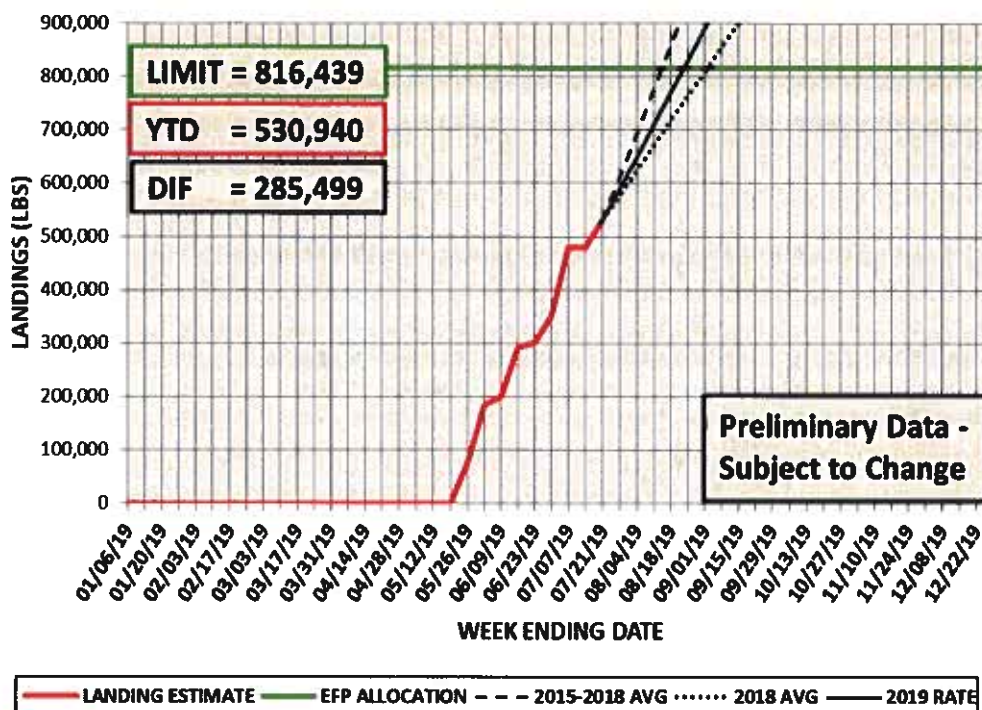
Week	Begin Date	End Date	Landings (lbs)					
			State Charter	Private Angler	Total	Weeks % of Allocation	Running Total	Running % of Allocation
21	5/20/2019	5/26/2019	1,067	76,622	77,689	10%	77,689	10%
22	5/27/2019	6/2/2019	3,073	103,481	106,554	13%	184,243	23%
23	6/3/2019	6/9/2019	3,872	10,944	14,816	2%	199,059	25%
24	6/10/2019	6/16/2019	4,027	87,701	91,728	11%	290,787	36%
25	6/17/2019	6/23/2019	1,530	8,458	9,988	1%	300,775	37%
26	6/24/2019	6/30/2019	11,057	39,113	50,170	6%	350,945	43%
27	7/1/2019	7/7/2019	4,716	124,094	128,810	16%	479,755	59%
28	7/8/2019	7/14/2019	0	0	0	0%	479,755	59%
29	7/15/2019	7/21/2019	3,780	47,405	51,185	6%	530,940	65%
30	7/22/2019	7/28/2019						
Average Weekly Landing			3,680	55,313	58,993	7%		

Season started May 24, 2019 as a weekends only (Friday, Saturday, and Sunday) season including the Monday of Memorial Day (5/27) and Thursday the Fourth of July.

There have been 32 days of Red Snapper season to date (29 days with estimates).



LOUISIANA'S 2019 RED SNAPPER LANDING ESTIMATES (LA CREEL - PRIVATE ANGLER + STATE CHARTER)



2019 EFP Voluntary Electronic Reporting

Week	Trips Declared	Trips Fished	Trips Not Fished	Red Snapper Kept	Red Snapper Discarded
21	74	63	11	326	294
22	76	62	14	321	417
23	16	13	3	42	21
24	54	37	17	75	57
25	8	6	2	54	42
26	43	37	6	142	81
27	41	32	9	190	98
28	0	0	0	0	0
29	24	24	0	89	63
30	9	7	2	64	25
2019 Total	345	281	64	1,303	1,089
2018 Total	491	364	127	1,413	954



Questions?

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